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SC
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 257.

HENRY E. FRANKENBERG COMPANY, PETITIONER,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 16, 1906.
CERTIORARI AND RETURN FILED MAY 7, 1906.

(20,200.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 2, 1906.

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a United States Circuit Court of Appeals for the Second Circuit.

(3770.)

THE HENRY E. FRANKENBERG —, Appellant,
vs.
THE UNITED STATES, Appellee.

Transcript of Record.

Appeal from the Circuit Court of the United States for the Southern District of New York.

[Stamped:] United States Circuit Court of Appeals, Second Circuit. Filed Sep. 12, 1905. William Parkin, Clerk.

1 United States Circuit Court, Southern District of New York.

In the Matter of Certain Merchandise Imported by HENRY E. FRANKENBERG COMPANY.

To the Honorable United States Circuit Court for the Southern District of New York:

Your petitioner respectfully shows that it duly imported and entered at the port of New York the goods described in the schedule annexed, and that the Collector of Customs of the United States for the port of New York thereupon levied certain duties in excess of the rate and amount required by law, and that upon all goods so entered for consumption said excessive duties have been duly paid.

That within the time required by law protests in writing were duly made and served in behalf of your petitioner giving notice to said Collector distinctly and specifically and in respect to each entry or payment the reasons for the objections to his decisions; and thereafter, and within the past thirty days from the date of this petition, a decision upon said notices or protests was made by the Board of General Appraisers, or by a majority of them as by the statute provided, adverse to the claims of your petitioner.

That your petitioner is dissatisfied with said decision, and
2 the following is a statement of the errors of law and fact complained of, viz.:

The General Appraisers erred:

1. In finding that the goods covered by this case are metal beads strung on cotton cords.

2. In not finding from the evidence in the case that the goods are metal beads temporarily strung on cords solely for the purposes of convenience or transportation.

3. In not holding that the goods in this case are beads not threaded or strung within the meaning of the provisions for such goods in paragraph 408 of the Tariff Act.

4. In holding that the goods are dutiable at the rate of 45 per cent. ad valorem under the provisions of paragraph 193 of the Tariff Act of July 24, 1897, for

"Articles or wares not specially provided for in this Act, composed "wholly or in part of * * * metal * * * , forty five per "centum ad valorem."

5. In not holding that the goods are dutiable under the provision in paragraph 408 of the said Tariff Act for

"Beads of all kinds, not threaded or strung, thirty-five per centum "ad valorem."

6. In not sustaining the claims set out in the protests of the importer.

That the following is a schedule of the importations embraced in this petition, viz.:

Description of merchandise.	Name of vessel.	Date of entry. 1902.	Date of protest. 1902.	Date of decision.
Metal beads.....	La Touraine.....	Feb. 17.	July 7.	Dec. 21, 1904.
Metal beads.....	La Savoie.....	Mar. 29.	Aug. 16.	Dec. 21, 1904.

3 Wherefore, your petitioner prays that the said Circuit Court review the questions of law and fact involved in the decision of the said Board of Appraisers, heretofore made in each of the above matters as to the classification and rate of duty assessed upon said merchandise, and for that purpose prays that an order may be entered requiring the said Board of Appraisers to return to said Circuit Court the record and evidence taken by them, together with a certified statement of the facts involved in each of the matters and their decisions thereon.

And your petitioner further prays for such additional orders and relief under the Statutes of the United States in such cases made and provided, as it may, in the judgment of the Court, be entitled to.

Dated New York, January 10th, 1905.

HENRY E. FRANKENBERG CO.,
Petitioner,
By FREDERICK W. BROOKS, *Attorney.*

4 United States Circuit Court, Southern District of New York.

In the Matter of Certain Merchandise Imported by HENRY E. FRANKENBERG COMPANY.

Upon reading and filing the petition of Henry E. Frankenberg Company in this case, dated the tenth day of January, 1905, and upon motion of Frederick W. Brooks, attorney for the petitioner, it is—

Ordered, That the Board of United States General Appraisers, sitting at the port of New York, return to this Court the record and the evidence taken by them, together with a certified statement of

the facts involved, and their decisions thereon, as to the dutiable classification of the following imported merchandise embraced in said petition, viz.:

Description of merchandise.	Name of vessel.	Date of entry.	Date of protest.	Date of decision.
		1902.	1902.	1904.
Metal beads.....	La Touraine.....	Feb. 17.	July 7.	Dec. 21.
Metal beads.....	La Savoie.....	Mar. 29.	Aug. 16.	Dec. 21.

Dated the tenth day of January, A. D. 1905.

E. H. LACOMBE,
U. S. Circuit Judge.

Bond for Costs.

Know all men by these presents, That I, Frederick W. Brooks, Jr., am held and firmly bound unto the United States of America, in the sum of fifty dollars, to be paid to the said United States of America, for the payment of which, well and truly to be made, I bind myself, my heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with my seal and dated the 10th day of January, 1905.

Whereas, Henry E. Frankenberg Company has applied to the Circuit Court of the United States, for the Southern District of New York, for a review of the questions of law and fact involved in certain decisions of the Board of General Appraisers, referred to in the petition of said petitioner, dated December 21st, 1904.

Now, therefore, the condition of this obligation is such that if the above named Henry E. Frankenberg Co. shall prosecute said proceeding to effect, and pay all damages and costs which shall be awarded against it in this Court if it shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

FREDERICK W. BROOKS, JR. [L. S.]

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Frederick W. Brooks, Jr., being duly sworn, deposes and says that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

6 Sworn to before me, and I also further certify that the foregoing bond was sealed, delivered, taken and acknowledged before me this 10th day of January, A. D. 1905.

JOHN P. EELLS,
Notary Public. [SEAL.]

This bond is approved as to form and amount and sufficiency of surety.

E. H. LACOMBE,
U. S. Circuit Judge.

7 *Return.*

In the Circuit Court of the United States, for the Southern District of New York.

Suit No. 3770.

In the Matter of HENRY E. FRANKENBERG COMPANY
v.
UNITED STATES, Being an Application for Review of a Decision of the Board of General Appraisers.

Return of the Board of United States General Appraisers to the Order of Hon. E. H. Lacombe, U. S. Circuit Judge.

Dated New York, Feb. 10, 1905.

The Board of United States General Appraisers, sitting at New York, in response to the order of the Court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

This return comprises:

(1) The importers' protests (2264-H and 4428-H), each of which is accompanied by a letter of the collector of customs, marked respectively Exhibits A to D.

(2) A transcript of testimony taken by the Board November 25, 1902, marked Exhibit E.

(3) A transcript of testimony taken by the Board on protest 111414, the subject of G. A. 5677, which was considered a
8 part of the record in this case, and is marked Exhibit F.

(4) A transcript of testimony taken by the Board on protest 138405, which was also considered by the Board and which is marked Exhibit G.

(5) The samples referred to in the testimony, which are enclosed in an envelope marked Exhibit H.

(6) A copy of the decision of the Board, which is known as G. A. 5878 (T. D. 25891) and is marked Exhibit I.

EXHIBIT A, SUIT 3770.

Please send all notices relating to this protest to F. W. Brooks, 27 William St., New York City.

NEW YORK, *July* 7, 1902.

SIR: We hereby protest against your liquidation and assessment of duty on our entry for Beads in case 393 and other merchandise of the same character more particularly described on entry and invoices by marks and numbers, imported by us in the vessel named below. We claim that the goods in question are dutiable under the

Tariff Act of July 24, 1897, as follows: at 35% ad. val. under the provisions in par. 408 for beads of all kinds not threaded or strung.

The foregoing claims are made directly, or by virtue of the similitude clause in Sec. 7. We further claim that the goods are dutiable under Sec. 6 at 10% ad val. or if not so at 20% ad val.

We also protest against the payment of all duties not legally chargeable upon said importation, and pay the amount exacted under duress and compulsion to obtain and retain peaceable pos-
9 session of the goods, holding you and the Government responsible for its return.

HENRY E. FRANKENBERG CO.,
By F. W. BROOKS.

To the Collector of Customs, New York City.

Entry No.	Bond No.	Vessel.	Date of entry.	Date of liquidation.
31153		La Touraine	Feb. 17, 1902.	June 28, 1902.

(Endorsed:) 2264 H. 8354. Henry E. Frankenberg Co. La Touraine. Beads Strung. To H. M. S.
Custom House, New York, July 7, 1902. Received.

C.	Vessel.	Ent. 1902.	Liq. 1902.	Pro. 1902.
	La Touraine	Feb. 18.	Jun- 28.	July 7.

EXHIBIT B, SUIT 3770.

Letter to General Appraisers Submitting Protest.

United States Customs Service, Port of New York.

COLLECTOR'S OFFICE, *July 22nd*, 1902.

Board of U. S. Gen'l Appraisers at the Port of New York.

GENTLEMEN: I submit the Protest of Henry E. Frankenberg Co. No. 8354, 2264H, against the assessment of duty as made by this Office on certain "Beads," imported by them in the "La Touraine," Feb. 18, 1902. An inspection of the invoice shows that the
10 goods in question were returned by the Appraiser as "Metal Beads Strung as Manufactures of Metal 45%."

Duty was assessed thereon at 45% ad valorem under the provisions of av. 193, Act of July 24, 1897.

Note Department Letter of April 3, 1902. Note also G. A., 5126 and 5162.

I have to report that the claimants have complied with the requirements of Section 14 of the Act of June 10, 1890, so far as lodging protest within the statutory time. The Naval Officer concurs in the decision of this Office.

The entry and invoice covered by the above protest are inclosed herewith.

Respectfully, J. J. COUCH,
Special Deputy Colletor.

3 Inclosures.

(Endorsed:) 2264H. Port of New York. Collector's Office, July 22, 1902, N. N. Stranahan, Collector.

Submitting Protest 8354 of Henry E. Frankenberg Co., 3 papers inclosed.

Received by Board of U. S. General Appraisers July 24, 1902.

EXHIBIT C, SUIT 3770.

Please send all notices relating to this protest to F. W. Brooks, 27 William Street, New York City.

NEW YORK, *August* 16, 1902.

SIR: We hereby protest against your liquidation and assessment of duty on our entry for Beads and other merchandise of the same character more particularly described on entry and invoices 11 by marks and numbers, imported by us in the vessel named below. We claim that the goods in question are dutiable under the Tariff Act of July 24, 1897, as follows: at 20% ad val., under par. 435 for imitations of precious stones; or at 25% ad val., under par. 448 for mnfs. of wax or of which wax is the component material of chief value; or at 35% ad val. under par 408 for beads of all kinds not threaded or strung; or at 35% ad val. under par 450 for mnfs. of pearl, shell or gelatin or of which these substances, or either of them, is the component material of chief value; or at 35% ad val. under par. 208 for mnfs. of wood or of which wood is the component material of chief value; or at 45% ad val. under par. 193 for articles of metal; or at 45% ad val. under par. 112 for mnfs. of glass or paste or of which glass or paste is the component material of chief value.

The foregoing claims are made directly, or by virtue of the similitude clause in Sec. 7. We further claim that the goods are dutiable under Sec. 6 at 10% ad val., or if not so at 20% ad val.

We also protest against the payment of all duties not legally chargeable upon said importation, and pay the amount exacted under duress and compulsion to obtain and retain peaceable possession of the goods, holding you and the Government responsible for its return.

HENRY E. FRANKENBERG CO.,
By F. W. BROOKS.

To the Collector of Customs, New York City.

Entry No.	Bond No.	Vessel.	Date of entry.	Date of liquidation.
59000		La Savoie.....	March 29, 1902.	August 11, 1902.

(Endorsed:)—4428H—10545—Henry E. Frankenberg Co.—La Savoie—Beads (Metal, &c,).

12 Custom House, New Yark, Aug. 16, 1902. Received.

C.	Vessel.	Ent. 1902.	Liq. 1902.	Pro. 1902.
	La Savoie..... ...	Mar. 31.	Aug. 11.	Aug. 16.

EXHIBIT D, SUIT 3770.

Letter to General Appraisers Submitting Protest.

United States Customs Service, Port of New York.

COLLECTOR'S OFFICE, *Sept. 5th,* 1902.

Board of U. S. Gen'l Appraisers, at the Port of New York.

GENTLEMEN: I submit the Protest of Henry E. Frankenberg Co., No. 10545, against the assessment of duty as made by this Office on certain "Beads," imported by them in the "La Savoie," March 31, 1902. An inspection of the invoice shows that the goods in question were returned by the Appraiser as "Metal Beads Strung as Manufactures of Metal, 45%."

Duty was assessed thereon at 45% ad valorem under the provisions of Par. 193, Act of July 24, 1897.

Note Department Letter of April 3, 1902. Note also G. A. 5126 and 5162.

I have to report that the claimants have complied with the requirements of Section 14 of the Act of June 10, 1890, so far as lodging protest within the statutory time.

13 The Naval Officer concurs in the decision of this Office.

The Entry and invoice covered by the above protest are inclosed herewith.

Respectfully,

J. J. COUCH,
Special Deputy Collector.

3 Inclosures.

(Endorsed)—4428H. Port of New York, Collector's Office, Sept. 5th, 1902. N. N. Stranahan, Collector.

Submitting Protest 10545, of Henry E. Frankenberg Co. 3 Papers inclosed.

Received by Board of U. S. General Appraisers, Sep. 6, 1902.

14 EXHIBIT E, SUIT 3770.

Before the Board of U. S. General Appraisers.

In the Matter of the Protests of HENRY E. FRANKENBERG Co., 2264-H and 4428-H.

NEW YORK, *November* 25, 1902.

Present: General Appraiser Somerville, Chairman; General Appraiser Fischer; General Appraiser Waite.

Appearances.

Albert H. Washburn, Esq., Counsel for the Treasury Department;
Frederick W. Brooks, Esq., Counsel for the Importers.
Chas. F. Kurz, Stenographer.

W. V. FRANKENBERG, called as a witness on behalf of the importers, having been duly sworn, testified as follows:

By Mr. BROOKS:

Q. *By* what firm are you connected with?
A. The H. E. Frankenberg Co.
Q. What is your position with that corporation?
A. President.
Q. Are you familiar with the goods imported by that corporation?
15 A. Yes, sir.
Q. Please look at the invoice covered by Protest 2264-F, and state if you are familiar with the goods described thereon as bunches of steel beads?
A. I am; yes, sir.
Q. Have you a sample of those goods?
A. Yes, sir.

Sample offered in evidence, admitted and marked Exhibit 1, 2264-F, Nov. 25, 1902.

Q. Do you know how those beads were strung—on what?
A. On this cotton thread.
Q. Do you know the object in putting them on this cotton thread?

Mr. WASHBURN: I object to that.
Objection overruled.

A. For the purpose of holding these things, for the purpose of facilitating transportation, that is all I can see.
Q. Do you know the use to which these beads are put in this country?
A. Yes, sir.
Q. What is that use?

Mr. WASHBURN: I object unless the witness is further qualified.

Q. To whom do you sell these beads?
A. To people in the dry goods business, notion business.
Q. Do you ever sell any to manufacturers?
A. We have not; no, sir. I have, I believe, in one or two cases.
Q. Have you any knowledge whatever as to the use to which these goods are put?
A. Yes, sir.
Q. What is the source of your knowledge?
A. Well, putting on purses.
Q. No, no; what is the source of your knowledge?
16 A. We have sold them to people who make up these purses.

By General Appraiser FISCHER:

Q. What kind of people make up purses—do you mean manufacturers of purses?
A. Yes, sir.
Q. You stated a moment ago you did not sell to manufacturers?
A. I said possibly one or two.

By Mr. BROOKS:

Q. Have you had occasion to ascertain from manufacturers of purses to whom you have sold goods of this kind what they do with them?
A. No, I have not.
Q. Please state to the Board what knowledge you have, if any, of the use to which these beads are put?
A. Nothing further than except for purses, very largely used on purses.

By General Appraiser FISCHER:

Q. Are they ever used as strung beads are used?
A. No, sir; never.
Q. Are they ever worn on strings about the neck?
A. No, sir; never.

By Judge SOMERVLLE:

Q. Are they ever used in the condition in which they appear in this sample?
A. Absolutely worthless in that condition.

By Mr. WASHBURN:

Q. What is your business—what sort of business are you in?
A. Woolen yarns, embroideries and notions business.
Q. And under the latter head you carry these beads?
17 A. Yes, sir.
Q. And this is the condition in which you——
A. Used as an article used in making purses?
Q. That is the condition in which you import these goods?
A. Yes.

Q. How long have you been importing them in this condition?
A. Possibly for fifteen or twenty years.
Q. Always the same way?
A. Always the same way.
Q. You say you sell to a certain extent to manufacturers, is that right?
A. Yes, to one or two manufacturers.
Q. Who are they?
A. One is in Chicago, by the name of Goss(?)
Q. What does he manufacture?
A. Purses.
Q. What is the other one's name?
A. I believe that is the only one I can recollect at the present moment.
Q. In addition to selling to this Chicago firm have you other sales for these goods?
A. Oh, yes.
Q. What is that?
A. They are used for embroidery purposes.
Q. To what class of trade do you sell them?
A. Drygoods trade; all large drygoods houses handle them.
Q. Wholesale houses do you mean?
A. Wholesale as well as retail.
Q. They use them for various embroidery purposes?
A. Yes, sir; they use them in their art departments.

Protest 4428–H.

By Mr. BROOKS:

18 Q. Please look at the invoice in this case and state if you are familiar with the merchandise described thereon as bunches of cut steel beads?
A. Yes, sir.
Q. Do they differ in any way from the article already offered in evidence in the previous case?
A. No, sir.

HUGO G. VEITH, called as a witness on behalf of the importers, having been duly sworn, testified as follows:

By Mr. BROOKS:

Q. With what firm are you acquainted?
A. A. & H. Veith.
Q. What is the business of that firm?
A. Importer of beads, fancy goods, and similar goods.
Q. How long have you been dealing in beads?
A. Twenty-five years.
Q. Please look at the sample already in evidence in this case and state if you are familiar with goods of this kind?
A. Yes, sir.

Q. Have you bought and sold them to any great extent?
A. Yes, sir.
Q. For how long?
A. The last twenty-five years.
Q. Do you know the use to which those beads are put?
A. Yes, sir.
Q. What is the source of your information as to the source of those beads?
A. I have been manufacturing with the same goods.
Q. To what use do you put them as a manufacturer?
A. Sewing on nets, making purses.
Q. When you use beads of that kind in manufacturing
19 do you use them in the condition in which they are imported?
A. No, sir.
Q. What do you do with them after importation?
A. Each string is taken out and another string tied on—that is, for one purpose; for another purpose they are unstrung and picked up by a needle. This case has been decided before.

By Mr. WASHBURN:

Q. Sometimes they are restrung?
A. Sometimes they are restrung, and other times they are taken off the string and used with a needle.

By Judge SOMERVILLE:

Q. What sort of threads are those beads on?
A. Cotton threads.
Q. Is that a stout thread or——
A. The thread is used—they are put up in bunches in order to sell them, handle them better. If they are not put up in bunches half the beads have got no holes. They will not buy them except in bunches, in order to know that each bead has got a hole.
Q. Beads without holes are comparatively worthless?
A. As a rule.

By Mr. WASHBURN:

Q. These are used for making purses?
A. Purses and embroidery.
Q. Embroidering what?
A. Embroidering laces or silks or anything.
Q. For what purpose?
A. Oh, for various purposes.
Q. Mention some of then?
A. For cushions, embroidering cushions, it has been used for the last fifty years, that kind.
20 Q. Use them for embroidering dresses or anything of that kind?
A. Yes, the same as any other bead is used.
Q. The same as any other bead is used?
A. Yes, sir.
Q. Have they any use except embroidery purposes so far as you know?

A. Any other purpose except embroidering?
Q. Yes.
A. Make purses out of them; regular crochet purses.
Q. Anything else you think of that you know about?
A. I don't know. They are used for so many things that I cannot think what they are not used for.
Q. They are used as articles of adornment more or less?
A. No, never.

By General Appraiser FISCHER:

Q. Did you ever buy similar beads to those unstrung?
A. There was a time when they were short, they could not string them, they didn't have hands enough to string them, and we imported them that way, but we got stuck on them, could not sell them.
Q. Does the market price vary if they are strung or unstrung?
A. No, sir; they are always the same price; it is only a question if they have got hands to string them, when you have got to take them unstrung, in bulk.
Q. What percentage of them are defective if you buy them unstrung?
A. That depends on how honest the manufacturer is.
Q. What is it about that—does it vary?
21 A. Yes, sir.
Q. Ten per cent., five per cent.?
A. That I cannot say.
Q. As low as five per cent. or as high as fifteen per cent.?
A. Oh, yes; sometimes as high as fifty per cent. if it is a dishonest manufacturer.
Q. It will vary.
A. Yes, sir.

By Judge WAITE:

Q. When you get them strung you get them just as cheap as unstrung?
A. The same price.
Q. String them by hand?
A. Women take fifteen or twenty needles and push them in——
Q. Fifteen or twenty needles?
A. Yes, they have got the knack of stringing them.

22 EXHIBIT F, SUIT 3770.

Before the Board of U. S. General Appraisers.

In the Matter of the Protest, No. 111,414, of CAMPBELL, METZGER & JACKSON.

Strung Beads.

NEW YORK, *May* 10, 1904.

Before General Appraiser Sharretts.

Appearance-.

C. D. Lawrence, Esq., Ass't Counsel for Government.
R. M. Fleming, Stenographer.

MORRIS GOLDBERG, of 7 Bond street, New York, called as a witness on behalf of the Government, being duly sworn, testified as follows:

By Mr. LAWRENCE:

Q. Mr. Goldberg, with what firm are you connected?
A. I am myself, Morris Goldberg.
Q. What is your business?
A. Principally is my business of beads.
Q. How long have you been in that business.
A. Well, I am in that business thirty-seven years here and four years an apprentice in London.
Q. Mr. Goldberg, when you say you handle beads, what do you mean by that; do you import them?
23 A. I import beads and sell them to manufacturers and dealers.
Q. Your dealings are wholesale entirely?
A. Wholly wholesale.
Q. Do you import beads in various conditions?
A. Yes, sir.
Q. Is the term strung beads a well known term in your trade?
A. Yes, sir.
Q. What does it mean?
A. Well, we import strung beads for to sell it to different department stores and to different trades, and we import loose beads for manufacturing purposes.
Q. And do you import loose beads which have been pierced?
A. Yes, sir.
Q. Referring to the beads which you designate as strung beads, such beads as are usually imported strung on cotton threads in bunches and are intended to be taken off and used for manufacturing purposes here, how are they known?
A. They are known as strung beads.

Q. Does the process of stringing these beads on thread and placing them in bunches enhance their value appreciably?

A. In Europe they vary in value from about fifteen per cent. to about eighteen per cent. dearer when they are strung on bunches.

Q. Does the cost of stringing increase the price of beads about how many per cent.

A. About fifteen per cent.

Q. About fifteen per cent?

A. Yes, on cheap goods.

Q. How do you account for that difference in value between the beads strung in bunches and the loose beads?

A. In the labor of the girl or whoever strings the goods
24 when they string them all at once it is a long needle, all at once it is too much space in the centre. They have to take it off again and throw away the imperfect beads and string them uniform.

Q. So that among the loose beads you find a great many that are not pierced through?

A. Yes, sir.

Q. And that adds to the labor?

A. Makes it extra about the labor.

Q. Mr. Goldberg, how long have you been familiar with the terms "threaded" and "strung beads?"

A. Thirty-seven years.

Q. Is is true, is it not, that on and prior to July 24, 1897, the terms threaded and strung beads was a familiar one in your trade?

A. Yes, sir.

Q. Did that term apply to beads threaded or strung in bunches?

A. Certainly in bunches or in hanks. The people used different hanks; some use single bunches, some use hanks, and they all come strung.

HUGO G. VEITH, of 622 Broadway, New York, called as a witness on behalf of the Government, testified as follows:

Q. Mr. Veith, what is your business, please?

A. Importer of beads.

Q. With what firm are you connected?

A. A. & H. Veith.

Q. What is your particular office?

A. Buying and selling beads, etc.

Q. How long have you been connected with that firm?

A. Twenty years.

Q. Do you go abroad and do their buying?

A. Yes, sir; sometimes.

Q. Do you import beads in large quantities?
25 A. Yes, sir.

Q. Are your dealings wholesale?

A. Well, wholesale and retail.

Q. In your trade are you familiar with the term "strung beads?"

A. Yes, sir.

Q. Does that apply to beads that are strung on thread in bunches?

A. Strung on thread in bunches; yes, sir.

Q. Mr. Veith, as a matter of fact, beads that are threaded in bunches, imported strung, are they sometimes taken off the bunches and used in manufacturing after importation?

A. Yes, sir.

Q. Are they sometimes used in the condition, the ordinary mat beads or bunched beads, are they used on the strings on which they come?

A. Yes, sir.

Q. Are they sometimes slipped from the original string to a more permanent string at a very little cost?

A. Yes, sir.

Q. Are all these goods known as strung beads or not?

A. They are known as strung beads in trade and commerce.

Q. Mr. Veith, does the process of threading and bunching the beads for importation increase their value appreciably?

A. Well, I would like to answer that, first, the beads are made and after that they are strung and this stringing increases the price of the beads.

Q. Whether they are strung temporarily or permanently, does it increase the value materially?

A. It increases the price no matter what form they are strung.

Q. About how much in your opinion does the stringing enhance the value of the beads?

A. Generally from 15 to 20 per cent.

26 Q. Can you state briefly why the stringing increases the value so much?

A. There is a considerable labor attached to it; the beads after they are manufactured have to be threaded, which increases the cost of the goods. It goes through different hands from those that make the goods, first they are made and then they are strung.

Q. Does each one have to be handled separately?

A. They have to be handled.

Q. And amongst the loose beads they find a great many imperfect beads?

A. Find a great many imperfect, which have to be thrown away.

Q. And you always find such beads among the loose beads?

A. Always.

Q. Mr. Veith, how long have you been familiar with the term threaded or strung beads?

A. Beads were always known as threaded or strung beads.

Q. Can you state as a matter of fact that on or prior to July 24, 1897, the term threaded or strung beads was familiarly known in your trade?

A. Yes, sir; strung beads.

Q. Does your statement mean that beads that were strung on threads for temporary use were commercially known at that time as strung beads?

A. Strung beads.

27 EXHIBIT G, SUIT 3770.

Before the Board of U. S. General Appraisers.

In the Matter of Protest of MORRIS GOLDBERG, #138,405.

Subject: Beads in Bunches.

Board No. 1.

Present: General Appraiser Sharretts.

NEW YORK, *Dec.* 14, 1904.

Appearances.

Comstock & Washburn (Mr. Hedges), Counsel for the Importers.
B. A. Levett, Esq., Asst. Counsel for Treasury Dept.
E. Nothiger, Stenographer.

JOHN L. GOLDBERG, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. HEDGES:

Q. What is your business, Mr. Goldberg?
A. I am salesman of the firm of Morris Goldberg.
Q. How long have you been in that capacity?
A. Since January, 1892.
Q. And you are familiar with the importations of Morris Goldberg—the merchandise they handle?
A. Yes, sir.

Protest 138,405.

Q. I show you the invoice, and calling your attention to the item invoiced as "Bunches of metal beads," in case 414, ask you if
28 you have a sample of that merchandise?
A. Yes, sir.
Q. Did you take a sample from this particular case?
A. Yes, from the goods in that case.

Sample referred to is offered in evidence.

By Mr. LEVETT:

Q. You say you took this out of the case yourself?
A. Yes.
Q. When?
A. To-day.
Q. Are the goods still in your possession?
A. Yes.

Sample previously referred to is received in evidence and marked Exhibit #1, Protest #138405, Dec. 14, 1904.

By Mr. HEDGES:

Q. How are these beads strung?
A. On white cotton threads.
Q. Do you sell these?

Question objected to as being immaterial.

(Witness answers:) We sell them by the bunch—so much per 100 bunches.

Q. Do you know how they are used?
A. Yes.
Q. How are they used?
A. They are used for sewing, for embroidering—different purposes; sometimes for ladies' neckwear, for slipper manufactures, for dress trimmings—numerous uses.

By Mr. LEVETT:

A. Are they used in the condition they are now?
A. No.
Q. What has to be done to them?
A. Have to be taken off the string.

Counsel for the Government requests that testimony taken in the case of Campbell, Metzger & Jacobson (G. A., 5677; T. D., 25291) be made a part of the record in this case.

Witness states that there is only the one item on the invoice on which protest is made.

EXHIBIT I, SUIT 3770.

Form 53 A.
General Appraisers.

G. A. 5878 (T. D. 25891.)

United States General Appraisers.

NEW YORK, *Dec.* 21, 1904.

In the Matter of Protests, $\frac{2244}{8354}$ & $\frac{4428}{10345}$ N, of Henry E. Frankenberg Co. Against the Assessment of Duty by the Collector of Customs at the Port of New York, Before Board No. 1.

SHARRETTS, *General Appraiser:*

The issue raised by these protests involves the classification and rate of duty applicable to metal beads strung on cotton cords. The importers contend that such merchandise is dutiable at the rate of 35 per cent. ad valorem under the provision of paragraph 408, act of July 24, 1897.

The collector assessed duty on the goods at 45 per cent. ad valorem, under paragraph 193, as manufactures composed wholly or in part of metal.

In G. A. 5677 (T. D. 25291) the Board, after duly considering the evidence of two of the largest importers of beads

in the United States, which evidence is made a part of the record in the present cases, decided adversely to the importers' contention, the issue then and now being identical. Since the rendition of that decision the Circuit Court of Appeals for the Seventh Circuit has affirmed the Circuit Court for the Northern District of Illinois, in the case of Buettner *v.* United States (suit 1557), holding that beads strung on cotton cord were dutiable under paragraph 408, as beads unstrung. Judge Grosscup, who delivered the opinion of the court, in discussing clauses "A" and "B" of paragraph 408 of the present act, reached the conclusion that:

The difference in the duty in the one—35 per cent. ad valorem—and in the other, 60 per cent. was intended undoubtedly as a differential in favor of domestic manufacturers of such fabrics. The cause, as we interpret it (referring to clause "A"), in view of the clause that follows, has application not to beads temporarily strung or threaded for purposes of transportation, but beads permanently threaded or strung as beads are threaded or strung in the manufacture of the fabrics, nets, wearing apparel and the like. In the interpretation of the statutes the letter must yield to the substance of the distinctions intended to be expressed and it is our judgment that the classification here intended was between metal beads constituting permanently a part of a fabric or article and beads that in their individual state may be worked into such manufactures.

While not concurring in these conclusions, though we recognize the force of the argument advanced by the court, we nevertheless would feel constrained to follow this decision were it not that another tribunal of equal jurisdiction had taken a contrary view.

31 The case referred to is that of Steiner *v.* United States (79 Fed. Rep., 1003), decided by the Circuit Court of Appeals for the second circuit.

There are some cogent facts which persuade us that this latter decision should be followed in this instance. It is not disputed that the merchandise in question is strung beads, and we find as a fact within our knowledge that the importation, the subject of the conflicting decisions above referred to, was of similar description and strung in identically the same manner. The only point with which we have to deal, therefore, is the dictum of the court in the Buettner case, that beads temporarily strung were not of the description of beads Congress intended to exclude from classification under subdivision "A," paragraph 408.

The court in this last-mentioned case suggested an intent on the part of Congress to give certain advantages to domestic manufacturers of beaded goods. This proposition can hardly be refuted, but the whole scheme in the present tariff evinces a determination on the part of Congress to differentiate between crude materials which have not been advanced in value by the application of labor abroad and those which have. Instances of this are found in paragraphs 303 and 385 of Schedules I and L, covering threads or yarns which partake of the nature of raw materials for weavers, but which, having been advanced in value and condition by process of labor, are made dutiable at comparatively high rates. Paragraphs 20 and 435 are among other numerous instances showing the same intent.

The testmony of large importers of beads whose interests were in the direction of seeing a reduction of duties, and one of whom is a protestant in the cases now before us, was to the effect that beads strung on cotton cords for temporary purposes were known
32 and had been known in trade for a period of thirty years as strung beads, and, further, that the labor of assorting and stringing beads added 15 to 20 per cent. to the value of loose beads. Can we not conclude that this fact was the potent cause which induced Congress to eliminate strung beads from paragraph 408 entirely, the rate of 35 per cent. chargeable on the loose beads being regarded as too low for those enhanced in value 15 per cent. by a process of labor abroad, and that of 60 per cent.—the rate chargeable on trimmings and completed articles—as too high? The effect of eliminating strung beads from paragraph 408 does not lead to an incongruous condition, but on the major part of imported beads strung the result would be the imposition of duty at a rate 10 per cent. higher than on beads not strung, and 15 per cent. lower than for the beaded goods. Assuming, for argument's sake, and the assumption is not unreasonable, that the labor of assorting and stringing beads was performed in this country by women and children, it could plausibly be concluded that Congress by legislation secured to them a fair degree of protection. If we are to decide the case within the intent of Congress it will be well to turn to prior tariff acts with a view to ascertaining what the legislative intent was.

Under the act of 1890, paragraph 445, provided for beads, loose, unthreaded and unstrung, and an importation of metal beads temporarily strung on cotton cords, entered at the port of New York during the life of that act, was excluded from classification as beads, loose. This importation was returned for duty by the collector as a manufacture of metal, duty being assessed thereon at the rate of 45 per cent. ad valorem. The correctness of this interpretation of the statutes was successively affirmed by the Board of General Appraisers, the Circuit Court for the Southern District for New York
33 and the Circuit Court of Appeals for the Second Circuit (see G. A., 876 (T. D.), 11,885, 66 Fed. Rep., 726; 79 Fed. Rep., 1,003). The decision of the Circuit Court of Appeals was regarded as final by the Government and importers, and was adhered to and acquiesced in until paragraph 445, act of 1890, was repealed by the act of 1894.

Congress, in framing the tariff act of August 28, 1894, did so with the avowed purpose of reducing duties on crude materials. Having knowledge that by judicial decision temporarily strung beads were classifiable according to material under the act of 1890, paragraph 99 of the act of 1894 provided for "Glass beads, loose, strung or carded," at the rate of 10 per cent. ad valorem. Had it not been that beads strung temporarily were regarded as not included within the term "loose" no necessity would have existed for incorporating the words "strung or carded," as the term "glass beads" without other qualifying words would have included those loose and also such as were strung or carded for purposes of convenience or transportation. Briefly summarizing the provisions of this paragraph we find included therein:

1. Loose beads;
2. Beads strung, and
3. Beads carded (that is, threaded and attached to cards solely for purposes of convenience or transportation).

The value of beads in the conditions specified increased in the order of their enumeration, and as paragraph 354 of the same act provided for articles manufactured from beads, the intent of Congress to include beads *temporarily* strung within the term "beads strung" is so manifest as to be hardly a debatable question. It is well worthy of consideration that paragraph 99 made provision only for
34 glass beads, and that metal beads strung on cotton cords were relegated for duty to the paragraph which provided for manufactures of metal, under the act of 1894, as they had been classified by judicial decision under the act of 1890; hence, during two tariff acts—from 1890 down to 1897—metal beads temporarily strung on cotton cords were classified as manufactures of metal.

In the act of July 24, 1897, Congress repealed paragraph 99 of the act of 1894, and re-enacted the provision of paragraph 445, act of 1890, in identical language with regard to beads of all kinds not threaded or strung. This was done with a full understanding relative to the class of goods included in the provision of the act of 1894 for loose beads and also that, by decisions of the courts and in accordance with the practice followed by customs officials and acquiesced in by importers for years, all beads—strung or threaded *in any manner*—were dutiable at the rate applicable to the material of which they were composed. In our opinion the intent of Congress was expressed in unambiguous language and that, both within the letter of the law and the intent of the lawmakers, only loose beads were provided for in paragraph 408 at 35 per centum ad valorem.

In accordance with the views herein expressed the protests before us are overruled and the collector's decision in assessing duty on the metal beads strung, now in controversy, at the rate of 45 per cent. ad valorem under paragraph 193 of the present act, in each case is affirmed.

(Signed) W. F. LUNT.
T. S. SHARRETTS.
C. P. McCLELLAND.

And for a certified statement of the facts involved in said
35 manner, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other Exhibits hereto attached.

WILBUR F. LUNT,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

36 United States Circuit Court for the Southern District of New York.

No. 3770.

HENRY E. FRANKENBERG & Co.
vs.
THE UNITED STATES.

TOWNSEND, *Circuit Judge:*

The decision of the Board of General Appraisers is affirmed upon the decision in this Circuit in *In re* Steiner, 66 Fed., 726; affirmed in 79 Fed., 1003.

(Endorsed:) U. S. Circuit Court, Southern District New York.—Filed Jun- 1, 1905.—John A. Shields, Clerk.

37 At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, held at the United States Circuit Court Rooms in the Post Office Building, in the City of New York, on the 8th day of June, in the year of our Lord one thousand nine hundred and five.

Present: The Hon. William K. Thownsend, Circuit Judge.

"A" Suit, No. 3770.

H. E. FRANKENBERG COMPANY
vs.
UNITED STATES.

The above cause coming on for hearing and determination before this Court on the application of H. E. Frankenberg Company, importers, for a review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon,

Now, after hearing Charles D. Baker, Assistant U. S. Attorney, on behalf of the Collector for affirmance, and Frederick W. Brooks, Esq., counsel for the said importers, for reversal, on motion of Henry L. Burnett, U. S. Attorney,

It is ordered, adjudged and decreed, that there was no error in said proceedings before said Board of General Appraisers,
38 and that their decisions herein be and the same are hereby in all things affirmed.

WM. K. TOWNSEND,
U. S. Circuit Judge.

Form assented to.
FREDERICK W. BROOKS,
Attorney for Importers.

(Endorsed:) "A" Suit No. 3770.—U. S. Circuit Court, Southern District of New York.—H. E. Frankenberg Company *v.* United States.—Judgment of Affirmance.—Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 8, 1905.—John A. Shields, Clerk.

United States Circuit Court of Appeals for the Second Circuit.

Suit "A," No. 3770.

HENRY E. FRANKENBERG & Co., Appellant,
against
THE UNITED STATES, Appellee.

The said Henry E. Frankenberg Company hereby applies for the allowance of an appeal from the decision in the above-entitled suit or proceeding entered on the first day of June, one thousand nine hundred and five, because the question involved is of such
39 importance as to require a review thereof by the United States Circuit Court of Appeals.

FREDERICK W. BROOKS,
Attorney for Appellant.

Office and P. O. Address, 66 Beaver Street, Borough of Manhattan, City of New York.

Appeal allowed.
New York, June 28, 1905.

E. H. LACOMBE,
U. S. Circuit Court Judge.

(Endorsed:) "A" No. 3770.—U. S. Circuit Court of Appeals, for the Second Circuit.—Henry E. Frankenberg Company, Appellant, *vs.* The United States, Appellees.—Application for and Allowance of Appeal.—Frederick W. Brooks, Attorney for Appellant, 66 Beaver Street, N. Y. City.—A copy of the within paper has been this day received at this office. Jun- 30, 1905, Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 30, 1905.—John A. Shields, Clerk.

40 United States Circuit Court of Appeals for the Second Circuit.

Suit "A," No. 3770.

HENRY E. FRANKENBERG COMPANY, Appellant,
against
THE UNITED STATES, Appellee.

Now come before the Justices of the United States Circuit Court of Appeals for the Second Circuit, at their Court Room, in the City of

New York, the said Henry E. Frankenberg Company, and say that in the record of the proceedings aforesaid there is manifest error in this, to wit:

The Circuit Court erred:

1. In affirming the decision of the Board of General Appraisers upon the Steiner case (66 Fed. Rep., 726; affirmed in 79 *Id.*, 1003) as decided in the Circuit Court and in this Court.

2. In not reversing the decision of the Board of General Appraisers upon the decision in the Circuit Court of Appeals for the Seventh Circuit in the case of United States *vs.* Buettner *et al.* (133 Fed. Rep., 163).

3. In not distinguishing this case from the Steiner case in view of the discrepancy between the testimony given in the former
41 and the evidence taken in the latter, as appears from the record in the former and from the Court's decision in the latter.

4. In not holding as a matter of law that the beads in this case were not threaded or strung, within the meaning of the provision for such goods found in paragraph 408 of the Tariff Act of July 24, 1897.

5. In not sustaining the claim of the importer as contained in the protests.

FREDERICK W. BROOKS,
Attorney for Appellant.

Office and P. O. Address, 66 Beaver Street, N. Y. City.

(Endorsed:) "A" Suit No. 3770.—U. S. Circuit Court of Appeals, for the Second Circuit.—Henry E. Frankenberg Company, Appellant, *vs.* The United States, Appellees.—Assignment of Errors.—Frederick W. Brooks, Attorney for Appellant, 66 Beaver St., N. Y. City.—A copy of the within paper has been this day received at this office. Jun- 30, 1895. Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District New York.—Filed Jun- 30, 1905.—John A. Shields, Clerk.

42 United States Circuit Court of Appeals for the Second Circuit.

Suit "A," No. 3770.

HENRY E. FRANKENBERG & Co., Appellant,
against
THE UNITED STATES, Appellee.

Know all men by these presents, That I, Frederick W. Brooks, Jr., am held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars ($250), to be paid to the said United States of America, for the payment of which, well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with my seal and dated the 27th day of June, in the year of our Lord one thousand nine hundred and five.

FREDERICK W. BROOKS. [SEAL.]

Whereas, the above-named Henry E. Frankenberg Company applies to the United States Circuit Court of Appeals for the Second Circuit to reverse a judgment rendered in the above-entitled suit or proceeding by the Judge of the Circuit Court for the Southern District of New York,

Now, therefore, the condition of this obligation is such, that if the above-named Henry E. Frankenberg Company shall prosecute said proceeding with effect and pay all damages and costs if they
43 shall fail to make said proceedings good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

BOROUGH OF MANHATTAN, *County of New York, ss:*

Frederick W. Brooks, Jr., being duly sworn, deposes and says: That he does business in the Southern District of New York, in the City of New York, and he is worth the sum of five hundred dollars ($500) over and above all his just debts and liabilities.

—— ——.

Sworn to before me this 27th day of June, 1905.

JOHN P. EELLS,
[SEAL.] *Notary Public.*

This Bond is approved as to form and amount and sufficiency of surety.

Dated New York, June 28, 1905.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) "A" No. 3770.—U. S. Circuit Court of Appeals, for the Second Circuit.—Henry E. Frankenberg Company, Appellant, *vs.* The United States, Appellees.—Bond for Costs.—Frederick W. Brooks, Attorney for Appellant, 66 Beaver Street, N. Y. City.—A copy of the within paper has been this day received at this office. Jun- 30, 1905.—Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 28, 1905.—John A. Shields, Clerk.

44 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Second Circuit, at the City of New York, on the 27th day of July, 1905, pursuant to an appeal on the part of the importer-, filed in the Clerk's Office of the Circuit Court of the United States for the Southern District of New

York, in a certain suit or proceeding entitled "Henry E. Frankenberg Company *vs.* The United States of America, 'A' No. 3770," to show cause, if any there be, why the decision of the United States Circuit Court in the said appeal mentioned, should not be reversed, modified or corrected and speedy justice should not be done in that behalf.

Given under my hand at the City of New York, in the Southern District of New York, on the 28th day of June, 1905.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

FREDERICK W. BROOKS,
Attorney for Appellant.

Office and P. O. Address, 66 Beaver Street, Borough of Manhattan, City of New York.

(Endorsed:) "A" No. 3770.—U. S. Circuit Court of Appeals, for the Second Circuit.—Henry E. Frankenberg Co., Appellant, *vs.* The United States, Appellees.—Citation.—Frederick W. Brooks, Attorney for Appellant, 66 Beaver Street, N. Y. City.—A copy of the within paper has been this day received at this office, Jun- 30, 1905. Henry L. Burnett, U. S. Attorney.—U. S. Circuit Court, Southern District of New York.—Filed Jun- 30, 1905.—John A. Shields, Clerk.

45 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to forty-four, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Henry E. Frankenberg Company, Appellant, against The United States, Appellee (No. 3770), as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 25th day of July, in the year of our Lord one thousand nine hundred and five, and of the Independence of the said United States the one hundred and thirtieth.

[L. S.] JOHN A. SHIELDS, *Clerk.*

46 United States Circuit Court of Appeals for the Second Circuit.

No. 138, October Term, 1905.

Argued February 22, 1906; Decided February 26, 1906.

(3770.)

THE HENRY E. FRANKENBERG COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Judges Lacombe and Coxe.

This cause comes here upon appeal from a decision of the Circuit Court, Southern District of New York, which affirmed a decision of the Board of General Appraisers, which sustained the action of the Collector.

Per Curiam: The articles in question are metal beads which have been strung on cotton threads and the only question is whether they are dutiable under Par. 408 of the Tariff Act of 1897, which reads: "Beads of all kinds, not threaded or strung."

Precisely similar articles except that they are made of glass were before this court *In re* Steiner (79 F. R. 1003). It appeared in that case as in this that the beads were strung on very thin cheap cotton thread, that such stringing was temporary only for transportation and for convenience in selling and that they were unstrung before they were used. We sustain the Circuit Court in holding that such articles were not within Par. 445 of the Act of 1890
47 as "glass beads * * * unthreaded or unstrung."

No new facts and no new arguments are presented which would require a different decision in this cause. Reference is made to a decision of the Circuit Court of Appeals in the Seventh Circuit, U. S. *v.* Beuttner (133 F. R. 163), where the facts were apparently the same but the conclusion reached different from that in the Steiner case; and it is suggested that, in order to secure an harmonious interpretation of the Tariff Act, we should reverse our former decision and follow the Court in the Seventh Circuit. Inasmuch, however, as the decision of this Court, was first in order of time, that argument might more properly have been addressed to the Seventh Circuit. Since we are not persuaded by the later decision that we were in error in our first conclusion, the better course would seem to be to adhere to our former ruling, leaving it to the Supreme Court to secure uniformity by determining which of the conflicting constructions of the paragraph is the correct one.

The authorities which are found in the exhaustive brief of coun-

sel for the importers are not controlling because they deal with causes where a circuit court in one circuit has reversed its former decision to conform to a later decision of a circuit court of appeals in another circuit. Here the first decision was by a court of equal jurisdiction.

The decision of Circuit Court is affirmed.

F. W. Brooks, for the Appellant.

Charles D. Baker, Assistant United States Attorney, for the Appellee.

48 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 7th day of March one thousand nine hundred and six.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Circuit Judges.

(3770.)

HENRY E. FRANKENBURG COMPANY, Appellant,
vs.
UNITED STATES, Appellee.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said Circuit Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

E. H. L.

49 Endorsed: United States Circuit Court of Appeals, Second Circuit. Frankenburg Co. *vs.* U. S. Order of Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 7, 1906. William Parkin, Clerk.

50 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 49 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of H. E. Frankenburg Co. *vs.* United States, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court

to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 9th day of April in the year of our Lord One Thousand Nine Hundred and Six and of the Independence of the said United States the One Hundred and Thirtieth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

51 UNITED STATES OF AMERICA *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Henry E. Frankenberg Company is appellant and The United States is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
52 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of May, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

53 [Endorsed:] File No. 20,200. Supreme Court of the United States. No. 698, October Term, 1905. Henry E. Frankenberg Company *vs.* The United States. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed May 4, 1906. William Parkin, clerk.

54 In the Supreme Court of the United States, October Term, 1905.

No. 698.

HENRY E. FRANKENBURG COMPANY
vs.
THE UNITED STATES.

Stipulation as to Return.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record

now on file in the office of the clerk shall be taken as the return of the clerk of the Circuit Court of Appeals for the Second Circuit to the writ of certiorari issued herein.

FREDERICK W. BROOKS,
Counsel for Henry E. Frankenburg Company.
HENRY M. HOYT,
Solicitor General.

Endorsed: In the Supreme Court of the United States, October Term, 1905. Henry E. Frankenburg Company *vs.* The United States. No. 698. Stipulation as to return. United States Circuit Court of Appeals Second Circuit. Filed May 4, 1906, William Parkin, Clerk.

55 To the Honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having been lately certified and filed in the office of the Clerk of the Honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as a return to the writ of certiorari issued herein.

Dated New York, May 4, 1906.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

56 [Endorsed:] 698, 20,200. United States Circuit Court of Appeals, Second Circuit. H. E. Frankenburg Co. *vs.* United States. Return to Writ of Certiorari.

57 [Endorsed:] File No. 20,200. Supreme Court U. S., October Term, 1905. Term No. 698. Henry E. Frankenberg Company, petitioner, *vs.* The United States. Writ of certiorari and return. Filed May 7", 1906.

FILE COPY.

FILED
APR 16 1906
JAMES H. MCKENNEY,
Clerk.

In the Supreme Court of the United States,

October Term, 1905.

HENRY E. FRANKENBERG COMPANY,
Petitioner,

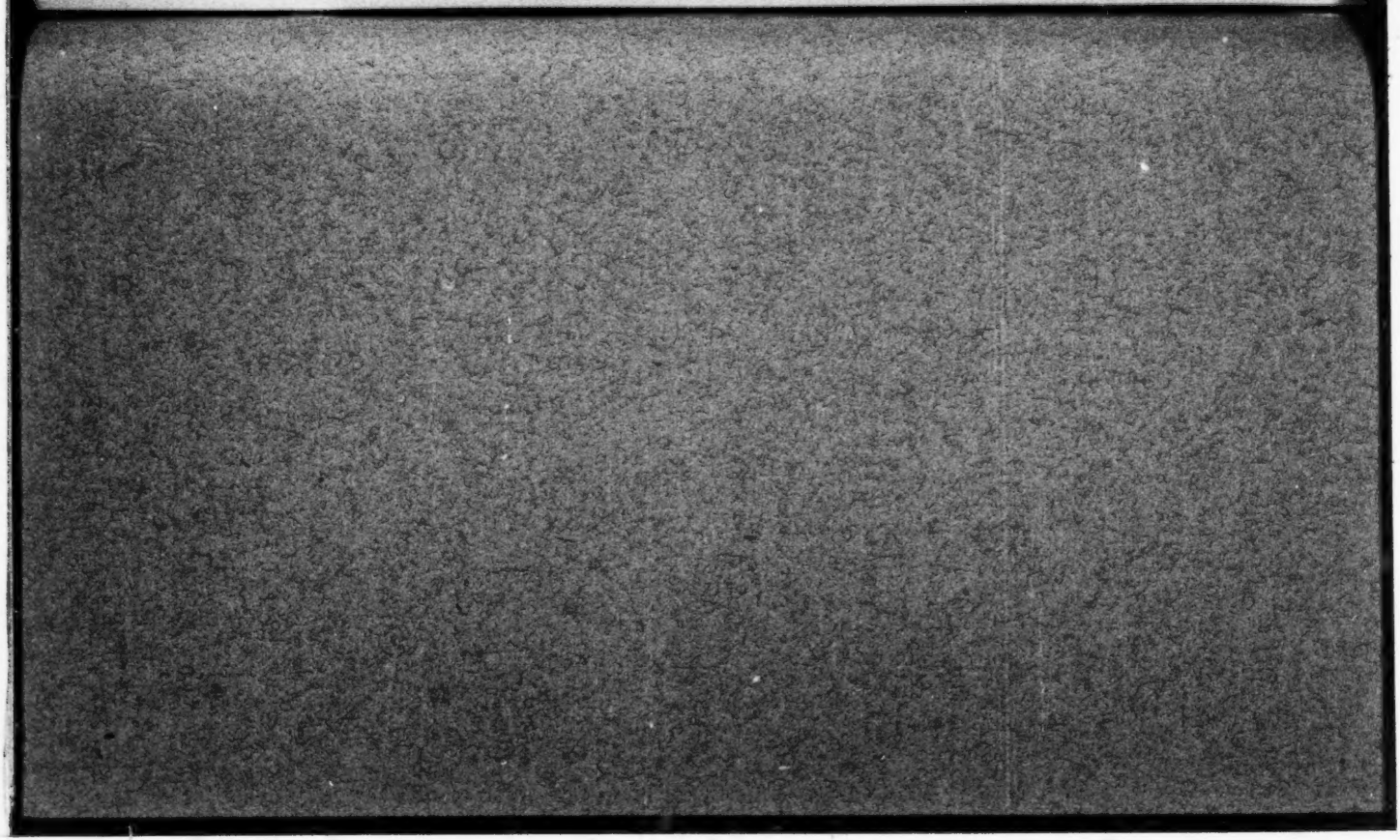
vs.

THE UNITED STATES,
Respondents.

No. 257.

PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

APPEAL PRINTING COMPANY, 14-16 VESEY ST., NEW YORK



In the Supreme Court of the United States.

OCTOBER TERM, 1905.

HENRY E. FRANKENBERG COMPANY,
Petitioner,

vs.

THE UNITED STATES,
Respondents.

No.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit and Brief Thereon.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Statement of the Case.

Your petitioner, Henry E. Frankenberg Company, respectfully represents that the merchandise which is the subject of this proceeding, was certain metal beads

on cotton cords, which were imported subsequently to July 24, 1897, on which the Collector of Customs at the Port of New York, assessed a duty of 45 per cent. *ad valorem* under the provision in Paragraph 193 of the Tariff Act of July 24, 1897 (30 Stat., 151) for

> "articles or wares not specially provided for in "this Act, composed wholly or in part of * * * "metal, and whether wholly or partly manufac- "tured, forty five *per centum ad valorem.*"

Against this exaction of duty the importer filed protests claiming that the merchandise is specially provided for in Paragraph 408 of the same Tariff Act, as

> "beads of all kinds, not threaded or strung, "thirty-five *per centum ad valorem.*"

In due course the protests were transmitted to the Board of General Appraisers, who subsequently rendered a decision thereon, which will be found in the Record (pp. 29-35). For reasons which appear in the decision of the Board, the claims in the protests were overruled,and the action of the Collector was affirmed. The case was brought into the United States Circuit Court for the Southern District of New York for review, and that Court affirmed the decision of the Board (Record, p. 36). The case was then taken into the United States Circuit Court of Appeals for the Second Circuit, which affirmed the decision of the Circuit Court, from which it will be seen that the goods in question are subject to the duty of 45 per cent. *ad valorem* as assessed by the Collector of Customs at the Port of New York as before noted.

BRIEF.

1.

The precise question involved in the litigation just mentioned has been decided by the Circuit Court of Appeals for the Seventh Circuit, in accordance with the claims of the petitioner, as appears from the decision of that Court in the case of the United States vs. Buettner, *et al.* (133 Fed. Rep., 163). In the decision of the case at bar in the Circuit Court of Appeals for the Second Circuit (Record, p. 46) it is stated by the Court that:

> "No new facts and no new arguments are pre-
> "sented which would require a different decision
> "in this cause. Reference is made to a decision of
> "the Circuit Court of Appeals in the Seventh Cir-
> "cuit, U. S. vs. Buettner (133 Fed. Rep., 163),
> "where the facts were apparently the same but the
> "conclusion reached different from that in the
> "Steiner case; and it is suggested that, in order to
> "secure an harmonious interpretation of the Tariff
> "Act we should reverse our former decision and
> "follow the Court in the Seventh Circuit. Inas-
> "much, however, as the decision of this Court was
> "first in order of time, that argument might more
> "properly have been addressed to the Seventh Cir-
> "cuit. Since we are not persuaded by the later
> "decision that we were in error in our first conclu-
> "sion, the better course would seem to be to ad-
> "here to our former ruling, leaving it to the
> "Supreme Court to secure uniformity by determin-
> "ing which of the conflicting constructions of the
> "paragraph is the correct one."

From this statement it would appear that the only

remedy of the petitioner herein to obtain relief from an assessment of duty which is believed to be erroneous, is to apply to this Court for a Writ of Certiorari to review the decision of the Circuit Court of Appeals on the question recently decided by them. The practical effect of these conflicting decisions is that the importer who does business within the jurisdiction of the Courts in the Second Circuit is compelled to pay a duty of 45 per cent. *ad valorem* on metal beads such as those in this case, while the importer who does business within the jurisdiction of the Courts in the Seventh Circuit is entitled to bring the very same kind of goods into this country upon the payment of an *ad valorem* duty of 35 per cent. This, it is submitted, is a grievance which is of sufficient importance to require the intervention of this Court.

This course was followed by the importers in the case of Chew Hing Lung & Co., petitioners, vs. John H. Wise (176 U. S., 156) where it appears from the decision that a Writ of Certiorari was granted and directed to the Circuit Court of Appeals for the Ninth Circuit on the allegation that there were inconsistent decisions in the Circuit Court of Appeals on this question.

The decision of the Circuit Court of Appeals for the Second Circuit, is substantially based upon the decision of the same Court in the Steiner case (79 Fed. Rep., 1003) which is a memorandum decision affirming the decision of the Circuit Court in the Steiner case (66 Fed. Rep., 726). In the latter decision it was stated that

"As I recollect the evidence the only testimony

> "before the board was to the effect that these are "strung beads; in fact a mere ocular examination "of them demonstrates that they are strung beads. "As there is no evidence to the contrary the Court "would hardly be justified in overruling the de- "cision of the board."

This Steiner case is mentioned in the decision in the Buettner case, *supra*, but was not followed for the reason that

> "The Court found, as a fact, that the beads were "threaded upon strings. This was the whole of "the finding. It was not disclosed whether the "threading was for purposes merely temporary, or "was permanent. For all that appears, the beads "in that case, may have constituted a completed "article of manufacture."

It would therefore seem that in the Buettner case the evidence was more extensive than that which appears from the decision to have been taken in the Steiner case; and this is one of the reasons why the case in the Second Circuit was not held to be a precedent for that in the Seventh Circuit.

2.

Your petitioner believes that the aforesaid decree of the Circuit Court of Appeals is erroneous, and that this honorable Court should require the said case to be certified to it for review and determination in conformity with the provisions of Section 6 of the Circuit Court of Appeals Act of March 3, 1891.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari may be issued out of and under

the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein, entitled Henry E. Frankenberg Company, appellant vs. The United States, appellees, No. 3770, to the end that the said case may be reviewed and determined by this Court, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the said Act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this honorable Court.

And your petitioner will ever pray,

HENRY E. FRANKENBERG COMPANY,
By FREDERICK W. BROOKS,
Attorney & Counsel for Petitioner.

City and County of New York, ss.:

Frederick W. Brooks, being duly sworn, says that he is the attorney for Henry E. Frankenberg Company, the petitioner above named, and as such had personal charge of the case in the foregoing petition mentioned in the Circuit Court of the United States for the Southern District of New York, and in the United States Circuit Court of Appeals for the Second Circuit; that he has read the said petition by him subscribed, and

that the facts therein stated are true to the best of his information and belief.

FREDERICK W. BROOKS,
Attorney & Counsel for Petitioner.

Sworn to and subscribed before me, this eleventh day of April, 1906.

[SEAL.] John P. Eells,
Notary Public,
Kings Co.

Certificate filed in New York Co.

[9344]

FILE COPY.

Supreme Court of the United States.

October Term, 1906.

No. 257.

Office Supreme Court, U. S.
FILED.
MAR 4 1907
JAMES H. McKENNEY,
CLERK.

HENRY E. FRANKENBERG COMPANY,
Petitioner,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Brief for the Petitioner.

FREDERICK W. BROOKS,
Attorney for Petitioner,
66 Beaver Street,
Borough of Manhattan,
City of New York.

APPEAL PRINTING COMPANY, 14-16 VESEY ST., NEW YORK

Supreme Court of the United States

OCTOBER TERM, 1906.

No. 257.

HENRY E. FRANKENBERG COMPANY,
Petitioner,

vs.

THE UNITED STATES.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF FOR THE PETITIONER.

Statement of the Case.

The case is before this Court by force of a writ of certiorari issued to the United States Circuit Court of Appeals for the Second Circuit, it being alleged in the petition for the writ that there were conflicting decisions in the Circuit Courts of Appeals for the Second Circuit and for the Seventh

Circuit on the issue herein. The decision in the Second Circuit will be found in the Record, folios 46-47, and that in the Seventh Circuit is reported as United States vs. Buettner, 133 Fed. Rep., 163.

The petitioner imported subsequently to July 24, 1897, certain metal beads on cotton cords, on which the Collector assessed a duty of 45% ad valorem under the provision in Paragraph 193 of the Tariff Act of July 24, 1897 (30 Stat., 151) for

> "Articles or wares not specially provided for "in this Act, composed wholly or in part of "metal, and whether wholly or partly manu- "factured, forty-five per centum ad valorem."

Against this exaction of duty the importer filed protests, claiming that the merchandise is specially provided for in Paragraph 408 of the same Tariff Act, as

> "Beads of all kinds, not threaded or strung, "thirty-five per centum ad valorem."

In due course the protests were transmitted to the Board of General Appraisers, who subsequently rendered a decision thereon, which will be found in the Record, folios 29-35. For reasons which appear in the decision of the Board, the claims in the protests were overruled, and the action of the Collector was affirmed.

The case was brought into the United States Circuit Court for review, and that Court affirmed the decision of the Board (Record, fol. 36).

On appeal, the decision of the Circuit Court was affirmed by the United States Circuit Court of Appeals (Record, fols. 46-47).

Specification of Errors.

The Circuit Court of Appeals erred:

1. In affirming the decision of the United States Circuit Court upon the Steiner case (66 Fed. Rep., 726; affirmed in 79 *id.*, 1003), as decided in the Circuit Court and in the Circuit Court of Appeals.

2. In not reversing the decision of the United States Circuit Court upon the decision of the Circuit Court of Appeals for the Seventh Circuit in the case of United States vs. Buettner, *et al.* (133 Fed. Rep., 163), and in not distinguishing the Buettner case from the Steiner case, in view of the discrepancy between the testimony given in the former and the evidence taken in the latter, as appears from the record in the former and from the Court's decision in the latter.

3. In not holding as a matter of law that the beads in this case were not threaded or strung, within the meaning of the provision for such goods found in Paragraph 408 of the Tariff Act, of July 24, 1897.

4. In not sustaining the claim of the importer as contained in the protests.

POINTS.

I.

The Steiner case as an authority is not entitled to the weight given to it by the United States Circuit Court of Appeals.

It appears from the decision of the Circuit Court

in the Steiner case (66 Fed. Rep., 726), that it was stated by the learned Judge that

> "As I recollect the evidence the only testimony "before the board was to the effect that these "are strung beads; in fact a mere ocular exam- "ination of them demonstrates that they are "strung beads. As there is no evidence to the "contrary the Court would hardly be justified "in overruling the decision of the board."

From this it would appear that there was no evidence in that case that the goods were only temporarily strung, and that they were strung only for purposes of transportation, and that as soon as they were imported they were removed from the strings on which they were brought to this country; nor is there anything to show that they were of that class which are permanently strung and which are used as necklaces.

This decision of the Circuit Court was affirmed by the Circuit Court of Appeals without opinion (79 Fed Rep., 1003).

The Steiner case is a decision which applied to the goods involved in that case, but manifestly is inapplicable here because the facts are different. The testimony in the case at bar shows that the beads were put on the cotton thread for the purpose of holding them, and for the purpose of facilitating transportation (Record, fol. 15); that they are never used as strung beads are used, nor worn on strings about the neck (Record, fol. 16) nor are they ever used as articles of adornment (Record, fol. 20); that they are never used in the condition in which they appear in this case (Record, fol. 16); that they are used for making purses (Record, fols. 17-20), and for various other purposes (Record, fol. 19); that they are not used in

the condition in which they are imported (Record, fol. 19). When used, they are removed from the strings on which they are imported (Record, fol. 19). They are placed on cotton threads and then put up in bunches in order to sell them and to handle them better; if they are not put up in bunches, half of the beads have no holes, and the dealers will not purchase them; beads without holes are comparatively worthless as a rule (Record, fol. 19). Beads have been imported without strings, but they were not merchantable in that condition, and if they are bought without strings, there are many defective ones among them; sometimes as much as 50%, if it is a dishonest man (Record, fols. 20-21); the price is the same whether they are on cords or not (Record, fol. 21). They have always been imported in this condition for possibly fifteen or twenty years (Record, fol. 17).

The testimony cited is sufficient to show that there was much more before the Court in the case at bar than there was in the Steiner case.

There was another bead case which was decided by the United States General Appraisers at the same time that they decided the Steiner case, and their decision in the former was subsequently affirmed by the Circuit Court and by the Circuit Court of Appeals; only memorandum opinions of affirmance seem to have been filed in the Circuit Court and Circuit Court of Appeals, the latter of which is reported as United States vs. Veith (89 Fed. Rep., 1020). In the Veith case, the General Appraisers in their decision, which was printed by the Treasury Department as G. A., 876, and dated September 19, 1891, found that the goods were

> "flat glass beads of various colors and sizes,
> "known commercially as nail-head beads, and

> "that they were fastened upon cards with "threads to protect the edges of the beads from "being broken and chipped in handling and "transportation. * * * Concerning the "nail-head beads fastened upon cards with "threads, in our opinion they are constructively "loose, as the words 'threaded beads' and "'strung beads' are recognized in the trade as "synonymous terms, and the testimony in the "case shows that the beads in question are not "known commercially as strung beads. * * * "The claim of the importer as to the goods "* * * is hereby sustained."

The importers' claims in these two cases of Steiner and Veith were under Paragraph 445 of the Tariff Act of October 1, 1890 (26 Stat., 567, 600), which was in the following language:

> "Glass beads, loose, unthreaded or unstrung, "ten per centum ad valorem."

If the Steiner case is an authority for the proposition that beads on cords are not unstrung within the meaning of Paragraph 445, the Veith case is equally an authority for the proposition that beads threaded on cards are unthreaded within the meaning of Paragraph 445. In the Veith case it was held that the beads were "constructively loose" and it would seem that there was equal authority for holding in the Steiner case that the beads were constructively unstrung.

II.

The decision in the Buettner case supra was a most excellent precedent to be followed in deciding the case at bar, and that case can be readily distinguished from the Steiner case.

The precise question now before this Court was elaborately argued in the Circuit Court and in the Circuit Court of Appeals for the Seventh Circuit as appears from the decision of the latter; the Circuit Court of Appeals holding that metal beads temporarily threaded or strung on cheap, weak cotton threads were not dutiable under the provisions of Paragraph 193 of the Tariff Act, but were dutiable at thirty-five per centum ad valorem under the provisions of Paragraph 408 of the same Act, under which the importer claims in this case.

In Volume 149 of the United States Reports will be found the opinions of this Court in three tariff cases, namely, Cadwalader vs. Wanamaker, page 532; Walker vs. Seeberger, page 541; Hartranft vs. Meyer, page 544. At pages 541 and 544 it is stated that concurring opinions will be found at page 547, in the course of which it is stated that

> "The end of litigation, so much to be desired,
> "is not fully satisfied by the close of the par-
> "ticular law suit, but implies that the question
> "involved therein is settled; so settled, that all
> "parties may adjust their dealings and con-
> "duct accordingly. A change in the personnel
> "of a court should not mean a shift in the law.
> "*Stare decisis* is the rule, and not the excep-
> "tion."

This rule of *stare decisis* is one which has especial merit in the consideration of questions arising under the Revenue Laws, for the reason that a difference of opinion between the Courts of two or more circuits results in great confusion in the administration of the laws. The practical effect of conflicting decisions, such as those in the case at bar, and in the Buettner case, unless one of those decisions should be reviewed by this Court, would be to require an importer who does business within the jurisdiction of the Courts in the Second Circuit to pay a duty of forty-five per centum ad valorem on metal beads as such as those in this case, while the importer who does business within the jurisdiction of the Courts in the Seventh Circuit could bring the very same kind of goods into this country upon the payment of a duty of thirty-five per centum ad valorem; in view of the fact that the Government seems to be unwilling to assess a lower rate of duty than that sustained by the opinion of the Court in the Second Circuit.

In the case of The Madrid (40 Fed. Rep., 678, 679), Mr. Justice LAMAR, in writing the opinion of the Circuit Court, stated that

> "The rule of *stare decisis* means, in general, "that when a point has been once settled by "judicial decision it forms a precedent for the "guidance of courts in similar cases. It ex- "presses 'the principle upon which rests the "authority of judicial decisions as precedents "in subsequent litigations' (Abb. Law Dict., "497; Gee's Adm't vs. Williamson, 27 Amer. "Dec., 631, note). This rule should, in the "main, be strictly adhered to. An adherence "to it is necessary to preserve the certainty, "the stability and the symmetry of our juris- "prudence. Nevertheless, there are occasions "when a departure from it is rendered neces-

> "sary in order to vindicate plain and obvious "principles of law, and to remedy a continued "injustice. These are the two grounds of jus- "tification in departing from a decision which "has become a precedent" (Wells, Res. Adj., Sec. 598).

The Court in the Buettner case seems to have considered that there was an occasion to depart from the rule when they did not feel justified in following the decision in the Steiner case. Referring to the latter, the following appears in the opinion in that case:

> "The Court found, as a fact, that the beads "were threaded upon strings. This was the "whole of the finding. It was not disclosed "whether the threading was for purposes mere- "ly temporary, or was permanent. For all that "appears, the beads in that case may have con- "stituted a completed article of manufacture."

It would therefore seem that the question was much more elaborately presented in the Buettner case than it was in the Steiner case, and for that reason the Judges in the former were justified in not following the ruling in the latter. This will appear more fully from the appendix to this brief, in which will be found a copy of the testimony taken in the Buettner case; and this has been printed from a certified copy of the record in that case, which certified copy has been filed with the Clerk of this Court with the briefs of the petitioner.

This issue was the subject of litigation in the Seventh Circuit on a previous occasion, in which it was held in the Circuit Court that the contention made here by the importers was correct; an appeal from this decision was taken by the United States, but it is understood that this appeal was dismissed in the Circuit Court of Appeals for some

technical reason. The Circuit Court decision in this case has not been reported in the Federal Reporter to my knowledge; but it, together with the notice that the United States had appealed from it, was published by the Treasury Department as Treasury Decision No. 25467 of the series for the year 1904, the case having been decided in the United States Circuit Court for the Northern District of Illinois on the 4th day of January, 1904. Some testimony of Mr. Buettner which was taken in this former case appears in the appendix, to which reference is made, in consequence of a stipulation that it should be admitted in the record of the second Buettner case. There is nothing in the testimony of this witness which differs substantially from his testimony as given in the second case; and there will be no occasion to call the attention of the Court to it; it will thus be seen that this issue has been very thoroughly argued in the Seventh Circuit on two occasions, and the Courts in that Circuit have had presented to them ample grounds for a very thorough consideration of the matter.

It is stated in the opinion of the Circuit Court of Appeals in the case at bar that no new facts and no new arguments are presented which would require a different decision in this cause from that rendered by the Court in the Steiner case. It is respectfully submitted that the evidence taken in this case would seem to show that very many new facts were presented at the time of the argument which would justify a very different decision in the case; and furthermore as the question involved was apparently much more elaborately presented in the Buettner case than it was in the Steiner case, the former should be entitled to more value as a precedent than should be given to the latter.

III.

The beads in this case were not threaded or strung within the meaning of that provision for beads found in Paragraph 408 of the Tariff Act of July 24, 1897.

In cases involving the construction of Tariff laws, it is frequently held that the strict letter of the law should not be followed; among such cases may be mentioned that of Seeberger vs. Schlesinger (142 U. S., 581, 587), where it was held that a provision for

> "Manufactures, articles, or wares not specially provided for in this act, composed wholly or in part of metal"

would not include articles of which an immaterial part was metal, but only in such goods as those where the metal was a necessary and substantial part of the articles should this provision of law determine their classification; and in the case of United States vs. Harden (68 Fed. Rep., 182), it was held by the United States Circuit Court of Appeals for the Second Circuit, that a handkerchief embroidered with only an intial letter was not classified or regarded as embroidered. Petition for writ of certiorari denied (163 U. S., 709).

The same conclusion was reached by the United States Circuit Court of Appeals for the Third Circuit, Mr. Justice SHIRAS sitting as Circuit Justice, in the case of United States vs. Jonas (83 Fed. Rep., 167-168). The same principle of law is very thoroughly reviewed in the case of United States

vs. Kirby, 7 Wallace, 482-486, in which it is stated that

> "All laws should receive a sensible construc-
> "tion. General terms should be so limited in
> "their application as not to lead to injustice,
> "oppression, or an absurd consequence. It will
> "always, therefore, be presumed that the legis-
> "lature intended exceptions to its language,
> "which would avoid results of this character.
> "The reason of the law in such cases should
> "prevail over its letter."

The Court then goes on to give numerous instances where there were exceptions to the literal language of the statute; it is unnecessary to cite them, for they are all cases which are well known to this Court. The same reasoning was employed in the opinion of the Circuit Court of Appeals for the Ninth Circuit, in the case of Tsoi Sim vs. United States (116 Fed. Rep., 920, 926, 927).

If we examine the provision for beads in the Tariff Act relating to this case, we shall find that it differs very much from previous legislation on the subject. By the 24th Paragraph of Section 2 of the Tariff Act of July 24, 1832 (4 Stat., 583, 590), a duty of fifteen per centum ad valorem was provided for

> "Composition, wax or amber beads and all
> "other beads not otherwise enumerated."

By the 12th Paragraph of Section 5 of the Tariff Act of August 30th, 1842 (5 Stat., 548, 556), a duty of twenty-five per centum ad valorem was provided for

> "Wax, amber or composition beads and all
> "other beads not otherwise enumerated."

By Schedule C of Section 11 of the Act of July

30, 1846 (9 Stat., 42, 44), a duty of thirty per centum ad valorem was provided for

> "Beads, of amber, composition, or wax, and all "other beads."

By Schedule N of the Tariff Act of March 3, 1883 (22 Stat., 488, 511), a duty of fifty per centum ad valorem was provided for

> "Beads, and bead ornaments of all kinds, ex- "cept amber."

By Paragraph 445 of the Tariff Act of October 1, 1890 (26 Stat., 567, 600), a duty of ten per centum ad valorem was provided for

> "Glass beads, loose, unthreaded or unstrung."

By Paragraph 99 of the Tariff Act of August 27, 1894 (28 Stat., 508, 514), a duty of ten per centum ad valorem was provided for

> "Glass beads, loose, strung, or carded."

In the Tariff Act of July 24, 1897 (30 Stat., 151), is found in Paragraph 408, the following provisions:

> "Beads of all kinds, not threaded or strung, "thirty-five per centum ad valorem; fabrics, "nets or nettings, laces, embroideries, galloons, "wearing apparel, ornaments, trimmings and "other articles not specially provided for in "this Act, composed wholly or in part of beads "or spangles made of glass or paste, gelatin, "metal, or other material, but not composed in "part of wool, sixty per centum ad valorem."

It will be readily seen that the provision for beads in the Act of 1897 is much more comprehensive than the provisions in previous Tariff Acts which have been quoted. We have in force at the present time a provision for what might be deemed two well-defined classes; namely, those

liable to a duty of thirty-five per centum ad valorem which were evidently intended to be beads in their crude form, and those liable to a duty of sixty per centum ad valorem, which were intended to be manufactured articles composed wholly or in part of those goods which pay thirty-five per centum ad valorem.

In the case of Steinhardt vs. United States (113 Fed. Rep., 996), metal beads such as those in the case at bar had been assessed with duty by the Collector under the provision in Paragraph 408 of the Tariff Act of 1897 for articles composed wholly or in part of beads, and in that case the importer claimed that they should have been assessed as articles composed wholly or in part of iron, steel or other metal under Paragraph 193 of the same Tariff Act. The Circuit Court sustained the contention of the importer, and held that beads were not articles composed wholly or in part of beads because they had been strung upon a cotton thread; no claim was made in that case, however, that the goods were subject to duty at the rate of thirty-five per centum ad valorem under the first clause of Paragraph 408, as is claimed here. As evidence that beads such as those in this case are in their crude form, attention is called to the testimony in the case, from which it appears that the beads were put on the cotton thread for the purpose of holding them and for facilitating transportation (Record, fol. 15); that they are never used in the condition in which they appear (Record, fols. 16 and 19); that they are placed on cotton threads and then put up in bunches in order to sell and handle them better, for if they are not put up in this manner, half the beads have no holes, and the dealers will not purchase them (Record, fol. 19). Beads have

been imported without strings, but they were not merchantable in that condition, and if they are bought without strings there are many defective ones among them, sometimes as much as fifty per cent. if the manufacturer is a dishonest man (Record, fols. 20, 21). They have always been imported in this condition for possibly fifteen or twenty years (Record, fol. 17).

The words "unthreaded or unstrung," in Paragraph 408 of the Tariff Act, evidently mean not permanently threaded or strung, because one of the witnesses was asked if these beads are ever used as strung beads are used and worn about the neck, and his answer was that they were never so used (Record, fol. 16).

There have been many decisions relative to beads permanently strung, which are published by the Treasury Department as decisions of the Board of General Appraisers, such as General Appraisers' Decision No. 4189, dated June 14, 1898, referring to beads forming parts of beaded curtains, and to beads forming rosaries and described in General Appraisers' Decision No. 4084, dated February 25, 1898, or to necklaces composed chiefly of glass beads and described in General Appraisers' Decision of Nov. 14, 1905, Abstract 8978, or to the bead bracelets mentioned in General Appraisers' Decision of May 25, 1905, Abstract No. 6776, or to the same goods described in General Appraisers' Decision dated March 8, 1905, Abstract 5211, or to the bead necklaces described in General Appraisers' Decision No. 4458, dated June 15, 1899, or to the bead necklaces mentioned in General Appraisers' Decision of January 29, 1906, Abstract 9890, or to the beaded curtains described in General Appraisers' Decision of January 29, 1906, Abstract

9889, or to the bead necklaces described in General Appraisers' Decision No. 4418, dated April 20, 1899.

The evidence further shows that beads were always imported on strings when in their crudest form, except for the time when there were no hands to string them, and the importer had to take them without strings, but even then he could not sell them in that condition (Record, fol. 20).

In a recent decision by the Circuit Court of Appeals for the Second Circuit, entitled Tiffany vs. United States (112 Fed Rep., 672, 674), it was held that a string of pearls was worth more than the aggregate value of the individual pearls composing it. Applying that rule to this case, we would find that if the beads had been permanently strung they would undoubtedly be worth more, and would then be dutiable at sixty per centum ad valorem under the later provisions in Paragraph 408. We should then have beads imported as these were, dutiable at thirty-five per centum ad valorem under the first clause of Paragraph 408, as a mere collection of individual beads whose value had not been increased by their collocation.

In the very recent case of Neresheimer vs. United States (136 Fed. Rep., 86, 88), the Circuit Court of Appeals for the Second Circuit quoted with approval from their decision in the Tiffany case, *supra*, and held that certain pearls which had been drilled, had not been advanced to a special value beyond the aggregate amount of their individual values by an assortment and selection that fitted them for use as a necklace or string of pearls. The Attorney-General directed that no appeal should be taken from this case (T. D., 25876).

In General Appraisers' Decision No. 5892, and

dated January 12, 1905, they had before them certain pearls pierced and strung on cotton cords, on which duty had been assessed by the Collector of Customs under the provisions found in Paragraph 434 of the Tariff Act of 1897, which is as follows:

> "434. Articles commonly known as jewelry, "and parts thereof, finished or unfinished, not "specially provided for in this Act, including "precious stones set, pearls set or strung, and "cameos in frames, sixty per centum ad va- "lorem."

It was claimed by the importer that the goods in question were dutiable under the provisions of Paragraph 436 of the same Tariff Act, which is in the following language:

> "Pearls in their natural state, not strung or "set, ten per centum ad valorem."

The Board of General Appraisers held, on the authority of the decision in the Tiffany case, *supra,* that the merchandise was dutiable by similitude at the same rate as pearls in their natural state, as claimed by the importer. Here was a case where pearls, which were in fact strung, were held to be dutiable under a provision in the Tariff Act for pearls not strung, under the principle laid down in the Tiffany case, *supra,* that pearls to be subject to duty under the provision for strung pearls should be of greater value when strung than the aggregate values of the individual pearls composing the whole string. I have no record of any appeal having been taken from this decision.

The evidence in this case shows that the beads require both time and labor, as in the pearl case, to be applied to them before they serve any useful purpose, and whether they are used for making

purses (Record, fols. 17, 20), or for embroidering (Record, fols. 17, 19), or for many other purposes (Record, fols. 19, 20), they are practically worthless except as crude materials for manufacturing purposes in the condition in which they are imported and in which they are presented here.

The evidence also shows that the goods have been imported in their crudest form on strings as one witness said for possibly fifteen or twenty years (Record, fol. 17) and another witness mentioned, without specifying the time, that they were imported otherwise than on strings when they could not get them on the strings (Record, fol. 20); and it would seem that this manner of importing beads must have been within the knowledge of Congress when the present Tariff Act was passed.

It is true that in their decision of the case at bar the General Apraisers state that the testimony of large importers of beads was to the effect that beads strung on cotton cords for temporary purposes were known and had been known in trade for a period of thirty years as strung beads (Record, fols. 31, 32); *but there is no evidence of that kind which was taken in this case.* The General Appraisers incorporated in their return to the United States Circuit Court some evidence taken by them in some other case in which one of the witnesses stated that the terms threaded and strung beads were familiar ones in his trade, and that the term applied to beads threaded or strung in bunches (Record, fol. 24). The other witness testified to the same effect (Record, fol. 26); but this Court is asked to disregard this testimony for the reason that it appears to have been taken before the General Appraisers by the counsel for the Government and that there was no cross-examination (Record,

fols. 22 to 26). Moreover, it does not appear from the record that the importer himself was present when his case was heard, *nor was he represented by counsel or by any person whatever.* Furthermore, the questions addressed to these two gentlemen were leading, and if it was attempted to show that the terms threaded and strung beads were ones of commercial designation, there was not sufficient evidence to bring the case within the definition of this Court to the effect that

> "Necessarily the commercial designation is the "result of established usage in commerce and "trade, and such usage, to affect a general en- "actment, must be definite, uniform and gen- "eral, and not partial, local, or personal."

Maddock vs. Magone, 152 U. S., 368-371; followed also in Berbecker vs. Robertson, 152 U. S., 373, 376.

Such testimony should not be allowed to overthrow that taken in this case *where the witnesses were examined by the counsel for the importers, by the counsel for the Treasury Department and by each one of the three General Appraisers in turn who heard the case* (Record, fols. 14-21). The General Appraisers have also incorporated in their return, the testimony taken in another case where the witness was examined by the counsel for the importer and cross-examined by the counsel for the Government; but there is nothing in that testimony which impairs the value of that taken in the case at bar (Record, fols. 27-29).

The General Appraisers also refer in their decision to the language relating to beads in the Tariff Acts of 1890, 1894 and 1897, and to some decisions made on questions arising under those Tariff Acts (Record, fols. 32-34). It will be noted

that the provision for beads in Paragraph 445 of the Tariff Act of 1890 relates only to glass beads, and an importation of metal beads must necessarily have come within the provision for manufactures of metal, that being the only paragraph in the Tariff Act which would cover them. The reference to the Steiner case, G. A. 876, *et seq.* (Record, fol. 33) has no particular application to an importation of metal beads, but refers only to glass beads, which were the goods before the Courts in that case. The change in the phraseology from the bead paragraph of the Tariff Act of 1890 to the paragraph in the Tariff Act of 1894 consisted in omitting the words, "unthreaded or unstrung" and inserting in their place the words, "strung or carded"; so that the provision in the Tariff Act of 1894 was

"Glass beads, loose, strung or carded."

As bearing on this change in the phraseology, it may be stated that the General Appraisers in the Veith case, decided by them September 19, 1891, held that certain flat glass beads fastened upon cards with threads to protect the edges of the beads from being broken in handling and transportation were constructively loose; and this decision was affirmed by the United States Circuit Court February 25, 1892 (not reported), and the latter was affirmed by the United States Circuit Court of Appeals for the Second Circuit April 28, 1893 (89 Fed. Rep., 1020). When the Tariff Act of 1894 was in preparation, the latest decision of the United States Circuit Court of Appeals on the bead question had held that beads threaded were constructively loose; and as the General Appraisers had already held in the Veith case that threaded or strung beads were recognized in the trade as synonymous terms, there

would seem to have been no reason for repeating the words unthreaded or unstrung in the Act of 1894.

The provision for beads in the Tariff Act of 1894 does not seem to have been the subject of any decision in the Federal Courts, but the Steiner case *supra*, which arose under the Tariff Act of 1890 was decided in the United States Circuit Court April 25, 1894, and that decision was affirmed in the United States Circuit Court of Appeals January 23, 1895. The provision for beads in the Tariff Act of 1897 was then enacted, which, as before stated, provided for beads of all kinds without regard to material, and metal beads are therefore within it as well as glass beads; and the only other provisions in that act relatng to beads are the one for manufactures containing beads and made in part of wool, whch are expressly exempted from classification under Paragraph 408, and a provision in Paragraph 390 for silk goods ornamented with beads, the rate of duty, sixty per centum ad valorem, being the same as the provision for other manufactured articles composed in part of beads in Paragraph 408.

There does not seem to be anything else in the decision of the General Appraisers which requires any attention on the part of the petitioner, except the fact that they declined to follow the decision of the United States Circuit Court of Appeals for the Seventh Circuit in the Buettner case in preference to that of the same Court for the Second Circuit in the Steiner case.

In the case of Conqueror, 166 U. S., 110, 115, it was stated that (evidently referring to tariff cases):

> "In all this class of cases, the meaning of "the words, as used in the particular statute,

"must be gathered from the context and from "the evident purpose of the act."

Applying this principle to the question at issue here, we find that in Paragraph 445 of the Tariff Act of 1890, loose beads were differentiated from beads unthreaded or unstrung in the provision for

"Glass beads, loose, unthreaded or unstrung."

The provision for beads in the Tariff Act of 1894, was contained in Paragraph 99 and was in the following language:

"Glass beads, loose, strung, or carded."

Loose beads were there charged with the same rate of duty as strung or carded ones, it having been held in the Veith case, *supra*, and shortly before the enactment of the Tariff Act, that carded beads were constructively loose, and that strung beads and threaded beads, that is, beads threaded on cards, were syonomous terms.

In the Tariff Act of 1897, there is no provision for loose beads, and as the testimony in the case at bar shows that the only manner in which beads have been imported for many years is on strings, it is a reasonable assumption that Congress must have taken notice of the fact that beads were no longer imported loose, and, therefore, were only imported on strings, and in order to find goods to come within the provision under which the petitioner claims in this case, so that all parts of the Act may become effective, it is necessary to hold that beads on strings, being temporarily strung, were those subject to the duty of thirty-five per centum for

"Beads of all kinds, not threaded or strung,"

as found in Paragraph 408 of the present Tariff Act.

Some reference may be made in the argument of the case at bar to Morrison vs. United States, 179 U. S., 456, in which the beads were strung and were made to imitate cat eyes, tiger eyes, garnets, acquamarines, moonstones, topaz and pearls, all of which were assessed with a duty of 60% under a provision in Paragraph 108 of the Tariff Act of 1890 for "manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this Act." The importers claimed that the goods in question were dutiable under a provision in Paragraph 454 of the same Tariff Act for "imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set, ten per centum ad valorem."

The U. S. Circuit Court of Appeals, for the Second Circuit sustained the claim of the importers (84 Fed. Rep., 444), and the matter was brought into this Court by a writ of certiorari. In the Court below it was conceded that the merchandise was excluded from classification under Paragraph 445, and that unless it was dutiable under Paragraph 454, it was properly classified by the Collector under Paragraph 108.

It can thus be seen as appears from the opinion of this Court at page 458, that the only issue in the case was, are or are not the goods imitations of precious stones, and are they or are they not dutiable under the provisions of Paragraph 454.

It is respectfully submitted that the decision in the Morrison case has no bearing on the case at bar because the only claim in the latter is whether or not the goods are dutiable under the provisions of Paragraph 408 of the present Tariff Act, which is somewhat like Paragraph 445 of the Tariff Act

of 1890, and as in Morrison case, such a claim was expressly excluded from the case by stipulation, it clearly was not the subject of decision in that case.

It is stated in the opinion of the Court below that the beads in this case as well as those in the Steiner case, *supra,* were strung on thin, cheap cotton thread, and that such stringing was temporary only for transportation and for convenience in selling, and that they were unstrung before they were used (Record, fol. 46). Many instances can be given where it has been held that devices for the transportation of merchandise were not sufficient to change their condition for the purpose of classification under the Customs Revenue Laws. In the case of Fleet vs. United States (148 Fed. Rep., 335), it was held in the United States Circuit Court that certain pieces of lambskin, sewed together continuously, not only for safety in transportation, but also for the purpose of presenting a more inviting appearance to purchasers, were not thereby taken out of the provision for dressed furs on the skin in the Tariff Act of 1883, and made liable to duty under the provision for articles made of fur in the same Tariff Act.

In General Appraisers' Decision No. 5457, dated October 23, 1903, it was held that certain squirrel skins, sewed together and made into parts of linings with a muslin lining basted on them, which was not a permanent lining, but intended merely for holding the skins and which was removed before they are finally cut to pattern to be used in making or lining garments, were dutiable as furs dressed on the skin but not made up into articles under the Tariff Act of 1897, and were not dutiable under a provision for manufactures of fur in the same Act.

In the case of Brauss & Co. vs. United States (120 Fed. Rep., 1017), it was held that certain split bamboo cut into lengths of twelve inches and tied in bundles were not manufactured articles, but should be classified under a provision for bamboo unmanufactured in Paragraph 700 of the Tariff Act of 1897.

In the General Appraisers' Decision No. 5315, dated April 2, 1903, the Brauss case, *supra,* was followed, and it was stated that the Treasury Department had acquiesced in the decision in that case. The goods were bamboo splits cut into lengths of twelve inches which were held to come within a provision for bamboo unmanufactured.

In General Appraisers' Decision No. 5626, dated March 30, 1904, it was held that certain small slivers of whalebone tied with a twine into bales or bundles of various sizes for convenient shipment were not manufactures of whalebone under the provision in the Tariff Act of 1897, but should be classified as whalebone unmaufactured under a provision in the same Act. In this case the Board quoted from the well known case of Hartranft vs. Wiegmann (121 U. S., 609, 615), a principle frequently invoked in the consideration of Tariff laws, where it was said that

> "The application of labor to an article, either "by hand or by mechanism, does not make the "article necessarily a manufactured article "within the meaning of that term as used in "the tariff laws."

Among other cases taken from the Hartranft case, *supra,* was that of United States vs. Wilson (foot of p. 615), where it was held that marble which had been cut into blocks for convenience of trans-

portation was not manufactured marble but was free from duty as being unmanufactured.

In the case of Boak vs. United States (125 Fed. Rep., 599, 600), it was held by the Circuit Court of Appeals for the Seventh Circuit regarding certain fox berries which had been imported in casks filled with water, that the use of water was a mechanical medium only to secure the berries against crushing in transportation, and that as imported they were in their natural condition.

In the case of Gudewill & Bucknall vs. United States (142 Fed. Rep., 214), the Court had before it an importation of small pieces of cork averaging a little larger in size than an ordinary grain of corn, and produced by grinding the refuse obtained in trimming cork bark in the process of fitting it for baling. It appeared that the principal object of the grinding was that the merchandise might be more conveniently shipped, and that it is used in the manufacture of linoleum and for other purposes, and for the former needs to undergo much further preparation. It was held that the process of grinding it did not make it a manufacture of cork within the provision for such goods in Paragraph 448 of the Tariff Act of 1897, and that it should have been classified as waste under Paragraph 463 of the same Act.

In the case of Hartranft vs. Wiegmann, *supra*, and cases cited therein, it was held that if the question were one of doubt, the doubt would be resolved in favor of the importer, as duties are never imposed on the citizen upon vague or doubtful interpretation.

IV.

The decision of the United States Circuit Court of Appeals should be reversed and the case remanded to the United States Circuit Court with directions to enter a decree reversing the decision of the Board of United States General Appraisers and holding the beads in controversy to be dutiable at thirty-five per centum ad valorem under the provision in Paragraph 408 of the Tariff Act of July 24, 1897, for beads of all kinds not threaded or strung.

FREDERICK W. BROOKS,
Attorney for Petitioner,
66 Beaver Street,
Borough of Manhattan,
City of New York.

[1182]

FILE COPY.

MAR 4 1907

JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

October Term, 1906.

No. 257.

HENRY E. FRANKENBERG COMPANY,
Petitioner,

vs.

THE UNITED STATES.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

APPENDIX TO BRIEF FOR THE PETITIONER.

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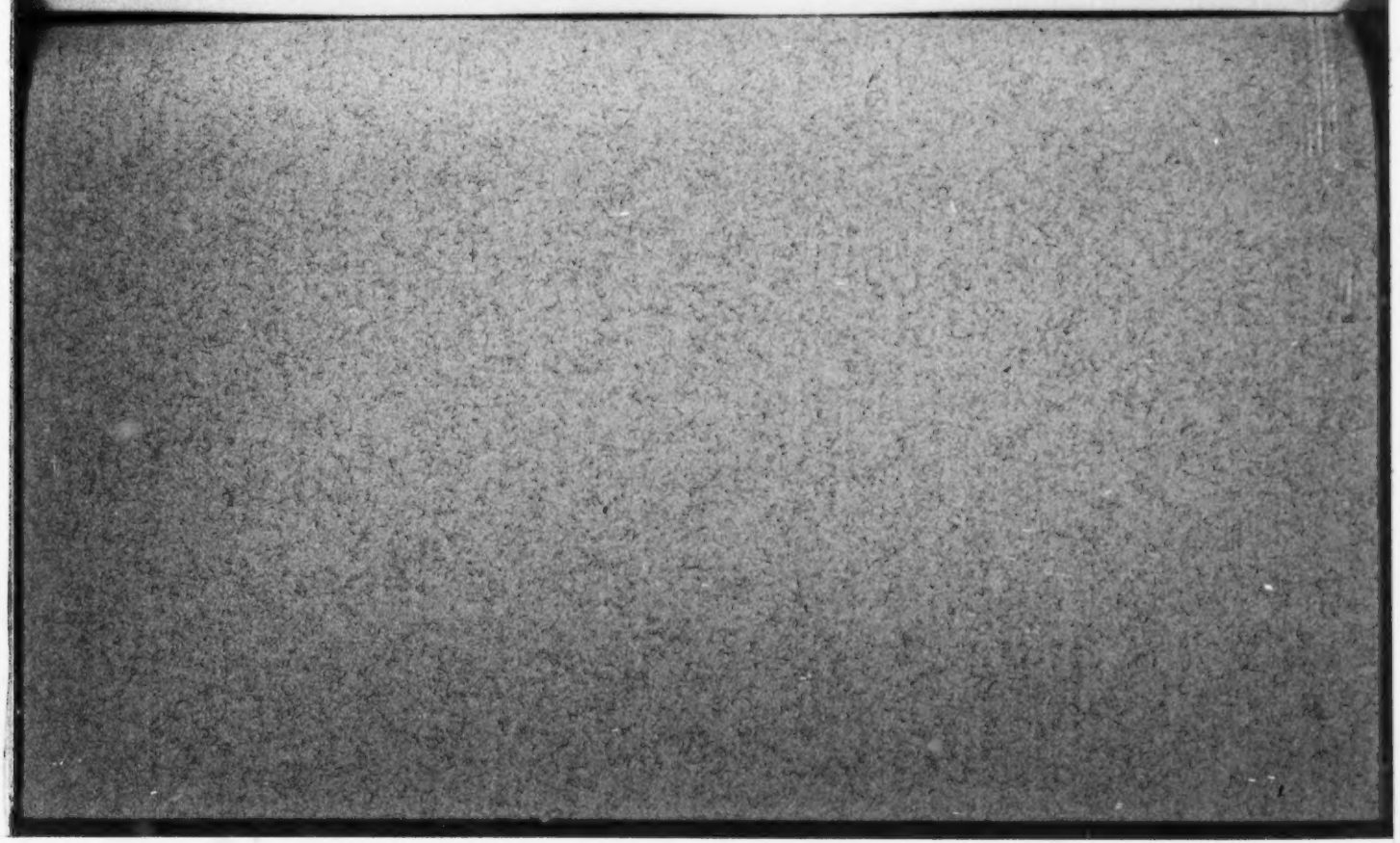

APPENDIX.

Return of Further Evidence.

IN THE CIRCUIT COURT OF THE UNITED STATES OF AMERICA,

FOR THE NORTHERN DISTRICT OF ILLINOIS—NORTHERN DIVISION.

In the Matter

of

The Appeal of T. BUETTNER & Co., from a decision of the Board of U. S. General Appraisers at New York, dated June 23, 1903.

The undersigned, Byron S. Waite, a member of the Board of U. S. General Appraisers, at New York, begs leave to report that in pursuance of the order of this Court, dated September 9, 1903, directing him to take and return to the Court such further evidence as should be offered by the Collector of Customs or the importers in this case, was present at the office of the United States Attorney for the Northern District of Illinois, on October 1, 1903, at 2 o'clock, P. M., and that there appeared before him Albert H. Washburne, counsel for the Treasury Department of the United States, in be-

half of the said Collector, and William Brace for T. Buettner & Co., the importers in this case, and that certain witnesses were produced before him, who, being duly sworn, testified as follows:

Mr. Washburne: Counsel for the Government admits that the merchandise in suit is metal beads composed of steel, temporarily strung on cheap cotton threads for convenience in handling.

E. T. BUETTNER, a witness produced on the part of the appellant, having first been duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. Give your full name? A. E. T. Buettner.

Q. Where do you live Mr. Buettner? A. Chicago.

Q. What is your business? A. Importer.

Q. Of what? A. Fancy goods, raw material, linens.

Q. Do you import beads? A. Yes, sir.

Q. Are you a member of the firm of T. Buettner & Co.? A. Yes, sir.

Q. Are you familiar with the importation which has been the matter of this controversy? A. Yes, sir.

Q. It is admitted that the importation consists of steel beads strung upon cheap cotton thread. Will you please state the purpose for which they are so strung?

Mr. Washburne: If he knows.

The Commissioner: Do you know why they are so strung? Answer yes or no.

The Witness: Yes, sir.

Mr. Brace: Now answer my question.

A. Why, for convenience's sake in handling the goods.

Q. In any other respect except handling? A. No.

Q. Have you a sample of the beads in question? A. Yes, sir.

(Witness produces same which is marked Exhibit A and is hereto annexed.)

Q. How are beads put up in this form commercially designated.

Mr. Washburne: Objected to on the ground that it is not shown so far that the articles have any commercial designation.

The Commissioner: Have you asked him?

Q. Have they a commercial designation in this form? A. Yes, sir.

Q. What is it?

Mr. Washburne: That is objected to; the witness has not been qualified to answer any questions as to commercial designation.

The Commissioner: It is my opinion at the present time that question might not be competent.

Q. How were they designated at or about the time of the importation?

Mr. Washburne: Counsel for the Government objects, on the ground that there is so far no evidence that the witness has dealt in the articles in suit in wholesale quantities; and on the further ground that there is no testimony that they have any general designation throughout the United States.

The Commissioner: I think the first ground stated is good.

Q. How long have you been an importer and dealer in these goods? A. Eleven years.

Q. Are you familiar with the goods in question and their commercial designation throughout the United States? A. Yes, sir.

Q. You have bought and sold them for eleven years? A. Yes, sir.

Q. And they have a fixed commercial designation? A. Yes, sir.

Q. What is it? A. Steel beads, unstrung.

The Commissioner: Steel beads, unstrung?

The Witness: Yes, sir.

Q. How are these beads used? A. They are being used for embroidering purposes and for fancy work.

Q. Well, embroidering and fancy work of what kind? A. For purses and so forth, the beads are taken off the string and they are put on other strings, silk mostly, or some other strings, and are used for manufacturing purposes mostly.

Q. Have they any use in the condition in which they are imported? A. None whatever.

Q. Are the beads, in their present condition, a finished article of commerce? A. No, sir, they are not.

Q. What are they? A. Why, they are nothing but beads, to be unstrung and unthreaded and used, as I stated before, for the manufacturing of other goods.

Q. Are they, in their present condition, a crude material for that purpose? A. Why, yes, sir; in that respect they are the foundation of the goods, the manufacturing of other goods.

Q. Could they be put to any purpose in their present state? A. None whatever.

Q. How are they bought and sold? A. They are bought as steel beads and sold as such.

Q. I mean are they sold by the number of strands or by the number of beads, or by weight, or how are they sold? A. They are sold by the masse, so many masses.

Q. And this is a masse? A. Yes, that we call a masse.

Q. What is the character of the string on which they are threaded? A. It is a cheap cotton string that all these beads are put on.

Q. Is it weak or strong? A. Oh, it is a weak string.

Q. Is the string of any value, except for the purpose of packing the beads in this way A. No, sir.

Q. Do you know what becomes of the strings on which they are threaded? A. Thrown away.

Q. Does the stringing of the beads in this form add anything to their cost or value? A. No, sir.

Q. Or does it change the character or the name or the use of these beads? A. No, sir.

Cross-examination by Mr. Washburne:

Q. You are a dealer in fancy goods, are you? A. Yes, sir.

Q. And you sell these beads by the retail, don't you? A. No, we sell them wholesale.

Q. To what wholesale dealers do you sell them? A. To manufacturers a good deal, to fancy goods stores.

Q. How long have you been selling them to manufacturers? A. Oh, since I have been in business.

Q. That is to say for eleven years? A. Yes, more or less.

Q. And have you been selling them to fancy

goods dealers during the same time? A. Yes, sir.

Q. By the way, are you the witness described as E. F. Buettner, who testified in a similar case on June 20, 1902? A. I presume so.

Q. Do you recall testifying upon that occasion that you did not sell them to manufacturers? A. No, I do not recall that at all.

Q. Let me refresh your recollection: Testimony taken on June 20, 1902, before William B. Howell, from the Board of United States General Appraisers, in Suit No. 960, United States Circuit Court of Appeals, United States of America vs. T. Buettner & Company, there appears this question and answer: "You do not sell them to any manufacturer? A. No, sir. Q. You sell them only to retailers? A. Yes, sir." Do you recollect those questions and answers? A. I do not recollect them.

Q. As made by your counsel, Mr. Brace? A. I do not recall the questions. I will say this, that we sell them mostly or a great deal of late to the retail trade; and, formerly, we sold them more to the manufacturers. I may have had that in view when I said that. There is no reason why I should say no, because we have been selling importations outright to the manufacturers. While more lately they are not used so much by the manufacturers, we have been selling them some to the manufacturers. We sell them now in smaller quantities, perhaps, than a year or so ago. When those bead purses were being made we sold a good deal to the manufacturers.

Q. To what manufacturers have you sold them within the last year? A. Oh, we have sold them to most every manufacturer around town.

Q. Give us one or two names? A. There have been manufacturers coming to our place, small manu-

facturers—and they have bought the goods. You must understand that these bead purses that were sold at a very cheap price were all made by small manufacturers, and they came to our place and paid cash for whatever they have bought, and they were using these for manufacturing those purses.

Q. That is not my question, Mr. Buettner, do you recall the names? A. We turned out a good many of these purses that they made.

Q. Don't you recall the name of any manufacturer? A. No, I do not, I might be able to get you some if you want.

Q. It is true, is it not, that this is the only variety of beads in which you deal? A. No, I said in other beads, too.

Q. What other variety of beads besides the beads in suit do you deal in? A. Why, for the present we deal in so-called Indian beads.

Q. What are they, Mr. Buettner? A. They are made of glass instead of steel, they are made in Italy.

Q. Similar in other respects? A. Why, they are similar to these.

Q. Are they strung on some kind of cheap cotton thread? A. Yes.

Q. How long have you been dealing in those? A. About four months.

Q. Just four months? A. Four months, just about four months.

Q. Prior to four months ago did you deal in both of these? A. Yes, sir.

Q. So that when you testified in 1902 that you dealt only in beads of this character, that was strictly true at that time? A. Yes.

Q. Then excepting these beads in suit and the Indiana beads to which we have just referred, you

deal in no other variety of beads? A. Why, yes, there is another, no, you cannot call them beads, that is about all.

Q. And the steel beads in which you deal are exclusively of this character? A. Yes.

Q. Of this size? A. Yes, sir.

Q. And imported in this manner? A. Yes, sir.

Q. And you have a large trade for them at retail, have you? A. Yes, sir.

Q. Now, where do you buy these beads? A. We buy them in Paris.

Q. You sell them as steel beads? A. Yes, sir.

Q. And you sell them as steel beads here, do you? A. Yes, sir.

Q. Why do you say they are known throughout the country as steel beads, unstrung, commercially? A. Because they are known as such.

Q. But you never sell them in that way, do you? A. Why, how do you mean, we do not sell them as such.

Q. You tell me you buy them and sell them as steel beads, and your testimony was to Mr. Brace that they are known throughout the country commercially as steel beads unstrung. I am asking you why you say that they are known throughout the country commercially as steel beads unstrung? A. Because if a man would come to me and ask for unstrung beads, I would offer him these.

Q. As a matter of fact though, they would come to you and ask for steel beads? A. Yes, sir, mostly they say they want steel beads.

Q. They say mostly they want steel beads? A. Yes.

Q. So, as a matter of fact, these are not generally known as steel beads unstrung? A. Why, every-

body knows they are such, but in asking for them the word "unstrung" is not used in all cases.

Q. You do not know what strung beads are, do you, whether there are any articles known to the trade as strung beads? A. Yes, sir.

Q. Do you know what they are? A. Yes.

Q. How long have you known what they are?

Mr. Brace: Objected to as not cross-examination. Counsel must make the witness his own witness on that, as there was no direct-examination on it. I have not asked him a word about strung beads.

The Commissioner: I think he can answer that; it is in the inquiry, I think that falls within the inquiry.

Mr. Brace: As cross-examination, I object to it on the ground that it is not cross-examination.

The Commissioner: Note an exception.

Q. There are no articles known as strung beads? A. Yes.

Q. How long have you known what they are? A. Well, only for about three or four months.

Q. Do you deal in those? A. Yes, sir.

Q. How long did you say that these have been known commercially as steel beads unstrung? A. Ever since I knew them.

Q. For how many years did you say? A. Fifteen.

Q. When you say that the cotton thread adds nothing to the cost, what do you mean, Mr. Buettner? A. I do not know as I can answer that question. The cotton thread is of no value whatever, and I never knew, have known, of any manufacturer to ask anything for the cotton thread.

Q. You mean the intrinsic value of the thread is practically nothing, is that your idea? A. Yes.

Q. These beads as imported are assorted as to size, there is one size there? A. That is the size, it is all one.

Q. How do you mean as to the size, there is one size there? A. But no assortment.

Q. Is it not true that beads are assorted into different sizes before being put up in this way? Or don't you know anything about that? A. I am not quite sure about it, yes I think I do.

Q. Do you know about it? A. Now, I do not understand exactly your question. Beads of this kind that you have there, there is only one size; there is no reason for sorting those.

Q. You mean that you import only one size; that is right, isn't it? A. No, I import more than one size.

Q. What size is this? A. No. 9.

Q. What are the other sizes you import? A. 8 and 10.

Q. Do you know, or don't you know that beads of this character are assorted before they are strung? A. Well, they are not. the three sizes are not made at the same time.

Q. Do you know that? A. Yes, I know that.

Q. How? A. Because I have been told.

Q. By who? A. By the manufacturer.

Redirect-examination by Mr. Brace:

Q. Do you know how they are manufactured, whether by hand or by machinery? A. As far as I recall the manufacturer told me that the beads are put in—

Mr. Washburne objected to.

Q. Do you know of your own knowledge, have

you ever seen them manufactured? A. No, I have never seen them manufactured.

Q. Do you know of any other importers of these beads? A. I believe there are a good many houses in Chicago; Marshall Field and others.

Q. You do not know the names of them? A. No, I do not.

Q. Do you know to whom these retailers sell them? A. Yes.

Q. Who? A. They sell them to women who do fancy work.

Recross-examination by Mr. Washburne:

Q. Is your house a wholesale house? A. Yes.

Q. Do you have a retail department? A. No, sir.

JOHN P. MANN, a witness produced on the part of the appellant, having been first duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. State your full name? A. John P. Mann.

Q. In what business are you engaged? A. I am at the present time jobbing and importing in Chicago and also have a retail store in Nebraska.

Q. What is the name of your house? A. Morris, Mann & Reilly in the city.

Q. What goods do you handle? A. We handle dry goods, fancy goods, combs, department store jewelry, and beads extensively.

Q. You deal in beads, you say? A. Yes.

Q. And articles made of beads? A. Yes, sir.

Q. Have you seen this sample of beads produced in this case? A. Only as I have seen them on the table while sitting in the room.

Q. Please look at them. (Witness does so.) Please state if you can how these beads are commercially designated. A. As steel beads.

Mr. Washburne: That presupposes that they have a commercial designation.

Q. Have they a commercial designation? A. That is the way I understad they are always bought and sold in the trade.

Q. That is the way they are designated in the trade? A. Yes, sir, that is the trade designation.

Q. Would you call that an article of beads?

Mr. Washburne: That is a question of law.

Q. (Continuing.) An article manufactured from beads? A. No, sir, that is not an article manufactured from beads.

Mr. Washburne: I object to that and move to strike it out on the ground that it is a question of law for the Court.

The Commissioner: How long have you been in this business?

The Witness: Twenty years.

The Commissioner: Handling this kind of goods?

The Witness: Yes, sir.

The Commissioner: Let it stand.

Q. Do you know the manner in which these are threaded? A. No, sir.

Q. Do you know upon what they are threaded? A. Well, this appears to be cotton string, sometimes—now I cannot say whether they are strung sometimes on silk or not; I have seen them with a silk tassel from this thread (indicating).

Q. Do you know for what purpose they are strung this way? A. Yes, sir.

Q. Please state? A. For the purpose of handling, buying and selling them.

Q. And transporting? A. Yes, sir.

Q. And for no other purpose? A. Not that I know of from my experience.

Q. Have they any use in their now condition? A. No, they haven't any more than if they were in a box or an envelope.

Q. Does the threading of them in that manner add to their cost or value? A. It may to their cost, but it adds nothing to their value.

Q. If a customer should ask you for strung beads would you show him those articles, understand he wanted those? (Indicating Exhibit A.) A. No, sir.

Q. What do you understand by strung beads? A. It is a term we do not often hear. If a customer asked me for strung beads, I would show him some beads strung ready for wearing.

Q. In the form of a necklace? A. In the form of a necklace or chain.

Q. Or made up in some proper article?

Mr. Washburne: Objected to as leading.

The Commissioner: Let the witness testify.

Mr. Brace: That is all.

Cross-examination by Mr. Washburne:

Q. Mr. Mann, do you deal in this particular variety of beads? A. Yes, sir.

Q. How long have you handled them? A. Oh, as far back as twenty years.

Q. Have they always been imported in this shape? A. I never imported any.

Q. You never imported any? A. No, sir.

Q. Where do you get them? A. Well, we buy them at the present time from importers.

Q. You buy them from importers? A. Yes, sir, we are using them in manufacturing at present.

Q. Do you buy them from Mr. Buettner? A. No, we never bought them from Mr. Buettner.

Q. For what manufacturing purposes do you use them? A. We are using them on belts and shopping bags.

Q. Do you buy them in large quantities? A. Well, yes, or probably buy Two hundred or Three hundred dollars worth at a time.

Q. How often? A. Well, not very often, because we have not been using them, we only started to apply them in manufacturing in the last two or three months.

Q. Well, prior to the last two or three months, when did you buy them, if at all? A. Yes, sir, we bought them a great many years ago.

Q. How many years ago? A. Oh, ten, fifteen or twenty years ago, in the retail business.

Q. Did you buy them right up to two or three months ago for the retail business? A. Yes, sir.

Q. Always going to your jobbers? A. Always going to the jobbers and importers.

Q. You buy them according to size, do you? A. Yes, sir.

Q. So buying them from manufacturers or rather from the importers and jobbers, you do not know how they are put up or anything about it, do you? A. Nothing more that I have handled them in that shape.

Q. You buy them and you sell them as steel beads, do you? A. We buy them at present and we use them.

Q. Yes, but you know them as steel beads, do you? A. Yes, sir. We also sell them; we also job them.

Q. And you never think of using the term "strung" or "unstrung" do you? A. No, sir.

Q. As a matter of fact, you just say "steel beads?" A. I just say "steel beads."

Redirect-examination by Mr. Brace:

Q. Do you know to whom the retailers sell them? A. To the ladies, to lady customers.

Q. Do you know what use they make of them? A. Well, very similar to the manufacturers; they use them in making purses and apply them on stock collars, decorating stock collars and work of that kind.

Q. Do they wear them in the shape in which those are imported? A. No, sir.

Q. Do they wear strung beads or articles made of beads, the ladies? A. Necklaces or chains, yes, sir.

Q. Is this a crude material from which articles of strung beads are made? A. I hardly think that any of those are strung for the purpose of wearing in the shape of necklaces or chains; they are generally used in the manner more in the nature of embroidering; they are applied as ornamental work on bags or belts.

Q. Are they crude material for making up that work? A. They are.

Q. Would they be commercially designated as "strung" or "unstrung" beads?

Mr. Washburne: Objected to.

The Commissioner: On the ground that the witness is not competent to testify?

Mr. Washburne: On the ground that the

witness is not competent to testify, and has only testified that he has sold this thing at retail for manufacturing purposes less than two months, and there is no testimony, so far as this witness has testified; the facts so far as he has testified, rather, go to show they are simply known as steel beads, and that the question of their being strung or unstrung does not enter into their trade nomenclature.

The Commissioner: The trade designation?

Mr. Brace: I was asking as to the time of importation, which is back some year or so ago.

Mr. Washburne: That is immaterial; he is asking a hypothetical question, would they be known as so and so?

Mr. Brace: I will ask to have the question read.

(Question read.)

The Commissioner: He has testified what they would be known as, that they would be known as steel beads, do you wish to change that?

The Witness: No, sir.

Q. Would they be commercially known as "strung beads?"

Mr. Washburne: Objected to on the ground that the witness has answered.

The Commissioner: The question is answered. I sustain the objection.

(Question read.) A. No.

Recross-examination by Mr. Washburne:

Q. Do you deal in "strung" beads? A. Yes, sir.

Q. What variety of strung beads do you deal in? A. Well, in agates, imitation pearls, wood beads, glass beads.

Q. You are not a jeweler, are you? A. I am not a practical jeweler, I am not a mechanic.

Q. But do you handle gems and necklaces? A. No, we handle necklaces, but not real stones.

Q. I think you testified that you seldom or never have a call for "strung" beads, is that right? A. I do not know whether I testified I did not have, but, however, we do not, they are not spoken of often in that way; but if anybody asked me for strung beads I would understand what they meant.

Q. How are they usually called for, the articles which you call "strung" beads? A. Bead chains.

Mr. Washburne: That is all.

C. KOERNER, a witness produced on the part of the appellant, having first been duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. Please, state your full name? A. C. Koerner.

Q. What is your business? A. I am a salesman and buyer for fancy goods.

Q. In Chicago? A. In Chicago.

Q. With what house are you connected? A. The Nonotuck Silk Company.

Q. Are you familiar with beads? A. With beads, yes, sir.

Q. And articles made of beads? A. Yes, sir.

Q. For what length of time have you been familiar with articles of that kind? A. During the past four years.

Q. Are you familiar with steel beads? A. Yes, sir.

Q. I will ask you to look at the sample of importation in controversy here and state how those beads are commercially designated, if they have a commercial designation.

The Commissioner: First, have they?

The Witness: They have a designation.

Q. They have a commercial designation? If so, what is it? A. I know them as steel beads and sell them as steel beads to my trade.

Q. Are they ever known as strung beads? A. No, they are not.

Q. Are they commercially known as "articles of beads"?

Mr. Washburne: I object to this testimony.

The Witness: I do not understand that.

Mr. Washburne: Counsel for the Government objects to all the testimony in this case as to trade or commercial designation, on the ground that it is immaterial, irrelevant and incompetent, the statute applicable in this case embodying words purely descriptive in character.

Q. Are those designated by the trade as threaded or strung beads?

Mr. Washburne: Same objection.

A. No, they are not.

Q. Do you know for what purpose they are put on the thread? A. For the purpose of convenience in handling, they handle them in that way.

Q. For convenience in transporting and selling?

Mr. Washburne: Counsel for the Government objects to that line of questioning.

A. Yes, sir.

Q. Are they of any value as an article of beads in their present condition?

Mr. Washburne: Objected to as immaterial.

A. No.

Q. Are they in a manufactured condition as they are now? A. No, they are not in a manufactured condition.

Q. What kind of a condition would you call it? A. In a crude condition, an article put on the market to sell and for convenience sake they are threaded as shown here, put in bunches.

Q. Does the threading or stringing add anything to their value? A. Not to my knowledge.

Q. Are they threaded or strung for permanent use in that form? A. This is not permanent.

Q. Do you know what "strung beads" are? A. Yes.

Q. What are they? A. Strung beads, the term "strung beads" is applied to a manufactured article, an article of beads ready to wear.

Cross-examination by Mr. Washburne:

Q. Do you handle this kind of beads? A. Yes, sir.

Q. Does the Nonotuck Silk Company? A. Yes, sir.

Q. Where do you get them? A. Buy them from importers.

Q. You do not import them yourself then? A. No, sir.

Q. Is the Nonotuck Silk Company wholesale or retail? A. Strictly wholesale, a manufacturer of silks.

Q. To what class of trade do you sell these beads? A. To jobbers and manufacturers, to the jobbers we sell ourselves.

Q. Your trade is confined to Illinois, more or less? A. No, sir.

Q. All over the country? A. All over the country.

Q. You buy and sell these as steel beads, do you? A. As steel beads, yes, they are known, they are classified as steel beads.

Q. And the question of their being strung or unstrung is never considered in the trade? A. In what sense do you mean?

Q. They are never ordered as strung or unstrung beads, are they? They are ordered as steel beads? A. Among the customers that we have, that are familiar with these goods, they are better known by the term steel beads, but we have customers that have inquired whether we have that bead strung on silk, or something like it, for sale, but there are not, although our customers would like it, to have them put up that way.

Q. Strung on silk? A. Yes.

Q. You have customers who inquire for these beads strung on silk? A. Yes, sir.

Q. That is what you mean by using the word "strung" in that connection? A. Yes, sir.

Q. You do not know how these are made, or how they are put up, do you? A. No, I am not a manufacturer; we buy them.

Q. But you do not know in what form they are put up by the manufacturer, do you? A. Yes, because they come direct to us as they import them.

Q. You have never seen them manufactured? A. No, sir.

Q. You do not know how they are put up there? A. Yes, I do.

Q. Have you ever been there? A. No, but I know they are put up in masses by the manufacturer of these beads.

Q. But the mechanical way of putting them up you do not know of? A. No.

Q. Perhaps you told me what class of trade they are sold to by your house? A. The fancy goods trade, jobbing trade; we sell them to manufacturers.

Q. Do you handle necklaces and beads that are strung for ornamental purposes? A. No, sir.

Q. You never do anything with those, do you? A. Not in our line of business.

Q. When you say that the stringing adds nothing to the value you mean that the value of the cotton thread is practically nothing, do you? A. Yes, sir.

Q. In that sense it adds nothing to the value of the bead? A. Yes.

Q. Of the bunch? A. Yes, sir.

Q. That is what you meant by that? A. That is my understanding that it does not.

Redirect-examination by Mr. Brace:

Q. You mean it adds no more than any other method of packing might add?

Mr. Washburne: Objected to.

The Commissioner: He has not said that. He said this adds nothing to the selling price of the beads, as I understand.

The Witness: Yes, sir, that is what I said.

The Commissioner: Do you mean to say that there is no other mode of packing that

would add anything to the asking price of the beads?

The Witness: I think if those were packed in boxes, in an elaborate box, it might add to the expense of this bunch of beads if there were packed separately. They have to be sold in quantity or skeins that can be handled by the trade.

The Commissioner: Then your answer to counsel was not as you intended strictly, that this adds no more than any other method of packing. Pay attention to the question, because there might be some distinction.

Q. They have to be packed in some manner? A. Yes, sir.

Q. And any method of packing would cost something, wouldn't it? A. Yes, sir.

Mr. Washburne: I object to the leading character of the question.

The Commissioner: I think that may assumed.

Q. Is this or is it not a cheap method of packing them for the market?

Mr. Washburne: Objected to on the ground that the witness doesn't know anything about packing.

The Commissioner: Are you familiar with any other method of preparing these beads for the market?

The Witness: No, sir, I have never known them to be put up in any other way.

Q. You do not know that there is any other

method that would be cheaper than this or not? A. No, sir.

Recross-examination by Mr. Washburne:

Q. You say you sometimes, Mr. Koerner, have a call for beads strung on silk? A. Yes, sir.

Q. Of this character? A. Yes, sir.

Q. For steel beads strung on silk? A. Yes, sir.

Q. You regard these beads in this sample before you, the official sample, as strung on cotton thread? A. I understand they are not strung in the way they are to be used, they have to be re-strung, to begin with.

Mr. Washburne: That is all.

R. ASMUS, a witness, produced on the part of the appellant, having first been duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. Please state your name, residence and business? A. R. Asmus; residence, Chicago; salesman.

Q. What line of goods are you selling, or what concern are you with? A. With T. Buettner & Co.

Q. Are you familiar with the handling and sale of beads? A. Yes, sir familiar with the sale of them, principally.

Q. Both strung and unstrung beads? A. Yes, sir.

Q. Are you familiar with the beads of which the sample that is in evidence in this case belongs? A. Yes, sir.

Q. Will you please state how these beads are commercially designated, that is, if they have a commercial designation? A. No particular one; they are usually called steel beads.

Q. Are you familiar with the term usually used in the trade in connection with these? A. Not outside of that, no, sir.

Q. Are you familiar with the manner in which they are usually spoken of in the trade, I say? A. Yes, sir.

Q. How broad a territory does your experience cover? A. You mean the territory I travel in?

Q. Yes, that is your whole experience? A. Ten years.

Q. Over what territory? A. Principally Wisconsin, Michigan and part of Minnesota, and the City of Chicago.

Q. Are beads put up in this form ever known to the trade, commercially designated as threaded or strung beads?

> Mr. Washburne: Counsel for the Government objects to all testimony in this case as to trade or commercial designation, on the ground that it is immaterial, irrelevant and incompetent, the statute applicable in this case embodying words purely descriptive in character.

A. No, sir.

Q. Do you know the purpose or object for which they are put up in this shape? A. It is only for convenience. If put up in boxes or papers it would answer the same purpose.

Q. And what is the purpose of this? A. Selling, handling, transporting and so forth.

Q. Do you know the character of the thread in the bundle? A. Cotton, I presume.

Q. Look at it, can you tell? A. Yes, sir, it is cotton.

Q. Is it of a temporary or a permanent nature? A. Temporary.

Q. Is it of any value? A. No, sir.

Q. Does it add anything to the value of the beads? A. No, sir.

Q. Do you know what "strung beads" are? A. Yes.

Q. Well, what are commercially known as strung beads?

Mr. Washburne: Do you deal in strung beads?

The Witness: No, sir.

Mr. Washburne: I object.

Mr. Brace: Does he have to deal in them to be competent to answer that?

The Commissioner: I think you may show what ground he has for his knowledge.

Q. Do you deal in what is known as strung beads? A. I would consider anything—

Q. No, do you personally know what is known as strung beads? A. Yes.

Q. In what manner are you familiar with them? A. Just observed traveling around, seeing other people selling them.

The Commissioner: Have you seen them bought and sold, have you seen strung beads bought and sold?

The Witness: Yes, sir, I have seen other people selling strung beads.

Q. What are they?

Mr. Washburne: Objected to on the ground that the witness has never dealt in strung beads, and his testimony is based on hearsay and observation.

Mr. Brace: Observation is good.

The Commissioner: As a matter of fact, is

your testimony based on what somebody else told you about it?

The Witness: Well, I have seen other people selling them.

The Commissioner: Have you been so intimately connected with the trade who sells them that you would know the designation?

The Witness: I have seen other people selling them, heard them calling for such things.

The Commissioner: Calling for what?

The Witness: For instance "strung beads."

The Commissioner: Now, you propose to describe what you have seen people sell when they have called for "strung beads?"

The Witness: Yes, sir.

The Commissioner: How many times have you seen that?

The Witness: A good many times.

The Commissioner: In what period, would you say?

The Witness: During the period that I have been selling goods during the last eight or nine years.

The Commissioner: He may answer.

(Question read.)

A. "Strung beads" would be beads in the shape of necklaces or something like that, to wear, I would designate as "strung beads."

The Commissioner: If a person called, for instance, for a string of beads, what would that indicate to you?

The Witness: If they came in and asked for a string of beads as they often do, it

would be a chain made up; beads in the shape of a necklace, that is what I would designate as "strung beads."

Q. Would these beads in their present condition be an article of wearing apparel? A. No, sir.

Q. From your experience as a salesman, and your observation, are you able to distinguish between that sample of beads and an article of threaded or strung beads? A. Yes, sir.

Mr. Washburne: Objected to, on the ground that the witness has not testified that there is any difference and this presupposes there is a difference.

The Commissioner: What he would call strung beads. You know what these are in point of fact?

The Witness: Yes, sir.

Q. Are threaded or strung beads articles of wearing apparel?

Mr. Washburne: Objected to as immaterial and irrelevant.

A. I should not consider them so, it depends, as I answered before, in the shape of a necklace I would say yes.

Q. Strung in the form for wearing apparel? A. Strung in the form for wearing apparel, yes, sir.

Mr. Washburne: I object to the question as leading.

Q. Are threaded or strung beads articles of wearing apparel? A. I would consider them so, yes, sir.

The Commissioner: Are these threaded beads?

The Witness: I would not consider them so.

The Commissioner: What is a threaded bead?

The Witness: I answered that.

The Commissioner: Threaded or strung means the same thing to you?

The Witness: Yes, sir.

Q. And that is the meaning of beads strung?

The Commissioner: Ask him what he means?

A. Beads strung when they are in shape for wearing apparel.

Q. Ready for use? A. Yes, sir.

Cross-examination by Mr. Washburne:

Q. How long have you been with the firm of T. Buettner & Company? A. Ten years.

Q. What were you doing before that? A. I was with Marshall Field & Company.

Q. During those ten years you have been out on the road? A. Most of the time.

Q. And the States you have been traveling in are Wisconsin, Michigan and Minnesota? A. Yes, sir; I have traveled some in Iowa, but that is my regular territory.

Q. You are familiar with the sales of T. Buettner & Company? A. Yes, sir.

Q. To what territory are they confined, their sales confined? A. Why, anywhere from Buffalo west to the coast.

Q. To the Pacific Coast? A. Yes, sir.

Q. Have they got agents out on the Pacific Coast? A. No, sir, they have not.

Q. How far west have they got agents or travelers? A. I think Lincoln, Nebraska, would be about as far west as they go.

Q. Now, your trade experience is confined to beads of this character, is it not? A. Yes, sir.

Q. The sample in suit? A. Yes.

Q. You don't know anything about any other kind of beads? A. Excepting Indian beads, we have been handling.

Q. But those only for a short time? A. Only a short time.

Q. These are the only varieties with which you are familiar? A. Yes, sir.

Q. Your testimony is based on your experience with those two varieties? A. Yes, sir.

Q. Now, when you saw customers come in and ask for strung beads, where did they come in and ask for strung beads? A. Where did they come in?

Q. Yes, where have you known of their coming in to stores? A. Where I have been selling goods to people, I know in the retail stores.

Q. In retail dry goods stores? A. In retail dry goods stores, yes, sir.

Q. You do not deal in wearing apparel, do you? A. No, sir, excepting you would call lace collars wearing apparel.

Q. As a matter of fact, those beads are strung on cotton thread, are they not? A. Yes, sir.

Q. Threaded on cotton thread? A. Yes, sir.

Q. So, in point of fact, they are threaded on cheap cotton thread? A. Strung or threaded, yes, sir.

Mr. Washburne: That is all.

The Commissioner: I would like to ask you a question as to the method of handling

and dealing in this particular class of goods. When they come in, they call for steel beads, don't they.

The Witness: They call for steel beads.

The Commissioner: How many steel beads are there in an article like that bunch there?

The Witness: When they call for steel beads, they call for so many "masses."

The Commissioner: This is known as a masse?

The Witness: Yes.

The Commissioner: A masse of steel beads?

The Witness: Yes.

Mr. Washburne: How is that spelled?

The Witness: M-a-s-s-e-s. It is a French word, I believe.

Mr. Washburne: This is known as a masse or masses?

The Witness: Masses is the plural.

The Commissioner: And a masse always contains the same number of beads?

The Witness: I presume it does.

The Commissioner: You do not know.

The Witness: I do not know.

The Commissioner: Approximately the same.

The Witness: Yes. There is a larger size which would weigh more than the smaller one.

The Commissioner: You do not sell them by weight.

The Witness: No, sir, we sell them so much a masse.

Redirect-examination by Mr. Brace:

Q. Are the masses packed in paper boxes? A. No. sir, they come in brown tissue paper, so many of them in a package, one hundred in a package.

Q. How is that package put up? A. Put up in paper, tied with a string.

Mr. Brace: That is all.

Mr. Washburne: That is all. I would like to recall Mr. Buettner just for one question.

E. T. BUETTNER, recalled for further cross-examination by Mr. Washburne on behalf of the Government, testified as follows:

Q. What territory do your sales cover? A. Why, we cover the whole United States, Mr. Washburne.

Q. You have orders from New England and east, do you? A. Not further east than Buffalo, we have had orders from New York City; but I would not say our territory goes further east than Buffalo.

Q. How far West? A. Well, all over the States, West; we have had orders from Skaguay, Alaska.

Q. Pacific coast? A. Pacific coast also.

Mr. Washburne: That is all.

It is stipulated that the testimony of E. F. Buettner, taken June 20, 1902, before William B. Howell, a member of the Board of General Appraisers, may be read into the record from the printed record in the case of the United States of America vs. T. Buettner & Company, Circuit Court of Appeals, Seventh Circuit, No. 960, with the same ef-

fect as if the testimony had been given, as to the contents of Mr. Buettner's deposition on that case.

Said deposition is as follows:

E. F. BUETTNER, a witness produced on the part of the plaintiff, having first been duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. Please, state your name? A. E. F. Buettner.

Q. Where do you live, Mr. Buettner? A. Chicago.

Q. What is your business? A. Importer of fancy goods.

Q. Import beads with other articles? A. Yes, sir.

Q. Are you a member of the firm of T. Buettner & Co.? A. Yes, sir.

Q. Are you familiar with the importation which is the subject matter of this controversy? A. Yes, sir.

Q. Will you please state just the condition in which the beads in controversy were imported? A. The beads are strung on a cotton thread, and afterwards they are sold on the cotton thread, and then they are threaded again from that cotton thread onto a silk thread and used in crocheting purses and other articles.

Q. For what purpose are they threaded on those cotton threads? A. For convenience sake.

Q. A convenient method of transportation? A. Yes, sir.

Q. Are they of any use in that condition? A. No, not at all.

Q. Are they used as articles of wearing apparel, or otherwise, in that condition? A. No, sir, they could not be.

Q. Then, as I understand, it is merely a matter of packing? A. That's all.

Q. A convenient manner of packing them for transportation? A. Yes, sir.

Q. In the condition in which they were imported, could they be put to any useful purpose? A. No, sir, they could not.

Q. How are they sold? A. They are sold in the same shape as they are imported.

Q. I mean are they sold by string? A. By the number of strings, by the thousand or the hundred. There are always a hundred strings in a package, and they are sold by the packages.

Q. What is the character of this string on which they are strung? A. It is just a common cotton string.

Q. What is its strength? A. It is very weak.

Q. Would it stand any use? A. No.

Q. Is the string of any value except for the purpose of stringing the beads on it? A. No, sir.

Q. Are these strings of beads what are commercially known as articles? A. No, sir.

Q. How are they commercially known in that condition? A. Well, we simply sell them as steel beads.

Q. As beads? A. Yes, sir.

Q. So that the fact that they are put up as strings do not make them articles of commerce in that condition? A. No, sir.

Q. How are they ordered? A. Just steel beads.

Q. If you get an order for steel beads how would you fill it? A. They are ordered in packages and there are a number of those strings in the package.

Q. But they differ as to size, do they not? A. Yes, there are different sizes, and each size is kept separate.

Q. Do they have a number? A. Yes.

Q. So that if you received an order for steel beads, you would have to have the number to know what the party wanted? A. Yes, the size.

Q. So, that's the way they are ordered? A. Yes.

Q. Do you know what the articles commercially as strung beads are? A. No, I do not know what strung beads are.

Q. Aren't they articles made up, in which the beads are already strung for use, made up into articles for wearing apparel? A. I don't know.

Q. You don't know? A. We don't deal in any beads, except these.

Q. You don't deal in manufactured articles in which beads enter? A. No, sir.

Q. You know that beads are worn by ladies in connection with their wearing apparel, don't you? A. Yes, they are worn, I suppose.

Q. You have seen them on their wearing apparel? A. Yes.

Q. Those are not in the condition that these are imported now? A. These can only be used after they have been re-strung on a stronger thread.

Appraiser: What do you say your business is?

A. Importer of fancy goods, linens, etc.

Q. And how do you come to import beads? A. Because the ladies now wear these crocheted purses, and these use these beads and string them on a silk thread, and crochet them into purses.

Q. And so you sell them at retail? A. Yes, and they re-string them and make these purses.

Q. You don't sell them to any manufacturer? A. No, sir.

Q. You sell them only to retailers? A. Yes, sir.

Mr. Brace: These are the beads that they use in making up these bead purses?

A. Yes, sir.

Q. Now commercially, would they be known as unstrung beads? A. Yes.

Q. They are only ordered as beads; they are not commercially known as string beads? A. No.

Q. And would not beads which are commercially known as strung beads be ones that were received for use in their then condition? A. I presume so.

The District Attorney objects to the question and the objection is sustained.

Cross-examination by O. E. Pagin:

Q. Of what material are all the beads, subject to this importation, composed? A. They are composed of steel.

Redirect-examination by Mr. Brace:

Q. I will call your attention, Mr. Witness, to this exhibit, marked "D 18," I will ask you what that is? A. That shows how the bead is used; the bead is strung on to a silk thread, and part of it is crocheted. This is just the way that the ladies use them to make the purses.

Q. This is not in the condition in which it was imported? A. No, sir.

Q. Have you samples of these beads in the form in which they are imported? A. Yes, sir.

Q. Those are samples, are they? A. Yes, sir.

Mr. Brace: We offer them in evidence.

Mr. Washburne: The Government rests.

Witness my hand.

BYRON S. WAITE,
Member of the Board of United States General Appraisers, acting as an officer of the Court.

Bunch of beads hereto attached, marked Ex. A. Oct., 1. 1903; not reproduced here.

Endorsed: Filed Oct. 17, 1903, Marshall E. Sampsell, Clerk.

[1055]

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Office Supreme Court U. S.
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JAMES H. MCKENNEY
Clerk

No. [redacted]257

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

HENRY E. FRANKENBERG COMPANY, PETITIONER,
v.
THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF OF THE UNITED STATES IN REPLY.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

HENRY E. FRANKENBERG COMPANY, PETITIONER,
v.
THE UNITED STATES. } 698.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF OF THE UNITED STATES IN REPLY.

The Government understands there is a direct conflict between the holding of the Circuit Court of Appeals for the Seventh Circuit in *United States* v. *Buettner* (133 Fed., 163) and the holding of the Circuit Court of Appeals for the Second Circuit in the present case.

According to the former metal beads temporarily strung on a cotton string or thread are subject to duty under paragraph 408, tariff act 1897, as "beads of all kinds, not threaded or strung," at 35 per centum ad valorem; according to the latter they are threaded or strung and are not, therefore, within paragraph 408.

The conflict between the two circuits is unfortunate, and will, unless remedied, probably produce confusion and uncertainty in the execution of the law.

I submit to the court the propriety of granting the writ.

HENRY M. HOYT,
Solicitor-General.

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JAMES H. McKENNEY,
CLERK

No. 257.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

HENRY E. FRANKENBERG COMPANY, PETITIONER,

v.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

HENRY E. FRANKENBERG COMPANY, petitioner, v. THE UNITED STATES. } No. 257.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The sole question in this case is whether metal beads, strung on cotton threads, which were classified and assessed for duty by the collector at 45 per centum ad valorem under paragraph 193 of the tariff act of 1897 as "articles or wares not specially provided for * * * composed wholly or in part of iron * * * or other metal," were, as claimed by the importer in its protest, specially provided for under paragraph 408 as "beads * * * not

threaded or strung," and hence entitled to entry under that paragraph at 35 per centum.

The collector's classification was sustained by the board of general appraisers, the Circuit Court, and the Circuit Court of Appeals for the Second Circuit, successively; but in view of the direct conflict between this holding and that of the Court of Appeals for the Seventh Circuit in *United States* v. *Buettner* (133 Fed., 163), the case has been brought to this court by writ of certiorari for final determination of the question involved.

The importations are described in the invoices as "bunches of steel beads." (R., 8.) They consist of metal beads, strung or threaded on cotton threads and gathered into bunches, and are described as so strung or threaded by every witness in the case. (R., 8, 11, 13, 15.) They are not used in this condition either as necklaces or other permanent form of strung beads (R., 9, 12), but are sold to manufacturers and dealers for making nets, bead purses, and other bead embroideries (R., 9–12), and before being so used are unstrung and either put on with a needle or restrung, according to the purpose for which they are used. (R., 11.)

They are strung in this way before importation, not merely for the purpose of facilitating transportation and better handling (R., 8, 11), but also "in order to sell them," for the reason that when they are not strung a large number of the beads have no holes and are comparatively worthless, the percentage of defective beads when they are imported

loose varying from 5 to 50 per cent, and hence purchasers "will not buy them" except in bunches in order to know that each bead has a hole. (R., 11, 12.)

This process of stringing them in fact involves an assortment, in which the defective beads are separated from the good ones and are thrown away. (R., 15.)

In other words, they are strung abroad not merely for purposes of transportation, but chiefly to change their condition to that of selected beads in order that they may find a sale in this country.

When, however, there is not available labor abroad for stringing them they are imported "unstrung" (R., 12), and some "loose beads" are also regularly imported for manufacturing purposes. (R., 13.)

It was also shown by two bead importers, witnesses for the Government (R., 14, 15), and stated as a "fact" by the Board of General Appraisers (R. 19), that on account of the increased labor involved abroad in the process of stringing the beads, their cost, when so strung, is increased 15 per cent over that of the loose beads. And although one of these importers, when called later as a witness for the petitioner, testified that, although the large percentage of defective beads when they were imported loose rendered them unsalable, the beads were nevertheless the same price, whether imported strung or unstrung (R., 12), not only is his former statement the more reasonable, but as the entire weight of the evidence is that the beads, when

strung, are necessarily and in fact more expensive than loose beads, the finding of the Board of General Appraisers on this disputed question of fact is now conclusive, under the well-settled rule that a finding of fact by the Board of General Appraisers will not be reviewed unless it is either entirely unsupported by the evidence or clearly against the weight of the evidence, or unless new evidence was introduced before the circuit court which was not considered by the Board. (In re *Kursheedt Mfg. Co.*, 49 Fed., 633; In re *White* (C. C. A.), 53 Fed., 787; In re *Van Blankensteyn* (C. C. A.), 56 Fed., 474; *Apgar* v. *United States* (C. C. A.), 78 Fed., 332.)

It was further shown by the testimony of the two bead importers, above referred to, that when the tariff act of 1897 was enacted, and for many years prior thereto, beads thus strung in bunches on cotton threads for temporary purposes were and had been familiarly known in the trade as "strung beads."

One of these witnesses, who had been a wholesale importer of beads for thirty-seven years, testified as follows:

> Q. Referring to the beads which you designated as strung beads—such beads as are usually imported strung on cotton threads in bunches and are intended to be taken off and used for manufacturing purposes here—how are they known?—A. They are known as "strung beads." * * *
>
> Q. Mr. Goldberg, how long have you been familiar with the terms "threaded" and "strung beads?"—A. Thirty-seven years.

> Q. It is true, is it not, that on and prior to July 24, 1897, the terms threaded and strung beads were familiar ones in your trade?—A. Yes, sir. (R. 13, 14.)

The other of these witnesses, a wholesale importer of beads for twenty years, testified as follows:

> Q. In your trade are you familiar with the term "strung beads?"—A. Yes, sir.
>
> Q. Does that apply to beads that are strung on threads in bunches?—A. Strung on thread in bunches; yes, sir. * * *
>
> Q. Can you state as a matter of fact that on or prior to July 24, 1897, the term threaded or strung beads was familiarly known in your trade?—A. Yes, sir; strung beads.
>
> Q. Does your statement mean that beads that were strung on threads for temporary use were commercially known at that time as strung beads?—A. Strung beads (R. 14, 15).

This testimony was entirely uncontradicted.

On the other hand, the importer offered no evidence even tending to show that the beads in question were ever known as unthreaded or unstrung or loose beads; or that there were any other beads used in commerce to which the term "threaded beads" could apply if it did not refer to beads of the class imported.

Testimony taken on former protest.

It is true that the testimony of the two bead importers above cited was taken on a former protest to which the present petitioner was not a party; it was, however, made a part of the record in the

present case, as follows: In response to the order of the circuit court directing the Board of General Appraisers to return the record and evidence taken by them and statement of facts involved, the Board not only returned the transcript of the testimony taken on the protest of the petitioner, but also included in their return a transcript of the testimony taken by them on a former protest, which they state "was considered a part of the record in this case, and is marked Exhibit F," this being the transcript in which the testimony of these two importers appears; and also a transcript of the testimony taken by them on another protest which they had also considered, and which was marked Exhibit G, the testimony in this latter transcript being, however, immaterial. (R., 4, 13, 16.)

The petitioner, however, made no objection in the circuit court to the inclusion in the Board's return of the testimony taken on the other protests and did not move to strike out such testimony, and the case was heard in the circuit court on the return as made by the Board (R., 21).

Under these circumstances, while petitioner in its brief asks that this testimony be disregarded on the ground that it was not taken in the present case and that it appears to have been taken by the Government ex parte, this objection is not well taken for two reasons:

1. The incorporation of such other testimony in the return of the Board of General Appraisers was proper,

as a matter of practice, the importers' proper procedure in such case being to introduce rebuttal evidence in the circuit court, if so desired.

This has been the established practice in proceedings before the Board of General Appraisers ever since the case of In re *Muser* (49 Fed., 831), decided in 1892, in which Lacombe, circuit judge, said:

> A statement of the facts involved in the case, as found by the board, is duly certified to this court. * * * There is also included in the return evidence taken in two other cases, with which these importers had no concern, of the existence of which testimony they were wholly ignorant, and which they never had any opportunity to answer or controvert before the board. * * *
>
> But the board of appraisers do not sit merely as a tribunal created to determine a controversy between parties upon evidence introduced by one side or the other. Whatever may be the language of the statute, the true rule for its interpretation is to be found in the intention of its makers, and we may find that intention in the record of the proceedings which terminated in its enactment. *Rector,* etc., *of Holy Trinity Church* v. *United States,* 12 Sup. Ct. Rep., 511. (143 U. S., 459.) The excerpts from the debates in the Senate (vol. 21, pt. 4, Cong. Rec., 51st Cong., 1st sess., p. 4004, et seq.), which were submitted on the argument by the district attorney, leave no doubt as to the character and functions of the board which Congress intended to create. The appraisers

were to be experts, with knowledge of their own as respects the values and classification of imported goods—knowledge derived not only from sworn evidence taken in the particular case in hand, but from countless other cases involving similar goods.

A clause securing to the importer the privilege of being present before the Board of General Appraisers, with or without counsel, as he might elect, was stricken out before passage, with the express intent that the proceedings before the Board might be to a large extent informal, and that they might sit, not as a court, but as an ex parte revenue tribunal, before which the parties were to have no right to be heard by counsel, to be confronted with witnesses, or to make argument, although the Board might, if it chose, require the attendance of witnesses and invite the importer to attend and state his case personally or by counsel. It was plainly contemplated by the framers of the act that the Board would sit as experts to decide in a summary manner questions of value and classification arising under the tariff laws, reaching their decision from their own expert knowledge and from the evidence submitted to them, or such as they might obtain.

A remonstrance by importers against the passage of the act in its present shape, which was presented and read in the Senate, expressly criticised the pending bill because "no right is given to the importer to be present, with or without counsel, at the proceedings of the Board or to cross-examine the Government's witnesses," and because "the Board can fix the

classification and rate upon any or even no evidence at all, in the absence of the importer and any witnesses he might be able to secure," and because "all the testimony that the Board may thus obtain or choose to use is made competent evidence by the circuit court, if an appeal is taken."

I do not find anything in the letter of the act itself which requires a different interpretation of its meaning, and, even if I did, should not, since the decision in the Holy Trinity case, supra, feel warranted in abiding by its letter, in the light of such unmistakable evidence as to the intention of its makers. As the act (section 15) expressly provides that all the evidence taken by and before the appraisers shall be competent evidence before the circuit court, and as their return shows that the evidence in the two cases with which this importer was not concerned was taken by or before them, the motion to strike it out is denied. The importer has abundant opportunity to controvert any such evidence, upon the reference to which he is entitled under the fifteenth section of the act.

This holding in the Muser case was recently followed by the Circuit Court for the Southern District of New York, in the cases of *Dunham* v. *United States* and *United States* v. *Achmoll*, in which the court sustained the contention of the Government to the effect that the inclusion in the return made by the Board of General Appraisers of testimony taken on other protests, was not only in accordance with the established and ordinary practice of the Board, but was

such a practice as was contemplated by section 15 of the customs administrative act.

2. But even if the inclusion of such other testimony was not proper, objection should have been made by the importer when it was included in the return made by the Board of General Appraisers to the circuit court, and the case having been considered in the circuit court on the entire return without objection by the petitioner, either by motion to strike such testimony from the record or otherwise, it is manifestly too late to raise an objection to such testimony on appeal. (*Burley* v. *German Amer. Bank*, 111 U. S., 216; *Teal* v. *Bilby*, 123 U. S., 572; *Wasatch Mining Co.* v. *Crescent Mining Co.*, 148 U. S., 293; *Paine* v. *Trask*, 56 Fed. (C. C. A.), 233; *Hunt* v. *United States*, 61 Fed. (C. C. A.), 795; *Hoppenstedt* v. *Fuller*, 71 Fed. (C. C. A.), 99; *Sigafus* v. *Porter*, 84 Fed., 430; *Cravens* v. *Carter-Crume Co.*, 92 Fed., 479.)

3. Furthermore, even if the other testimony so included is to given merely the weight of an *ex parte* affidavit, it still has some evidential weight, and being entirely uncontradicted in the matter of commercial usage, the importer having introduced no rebuttal evidence whatever in the circuit court, the finding of fact made by the Board of General Appraisers on such evidence is now conclusive under the authorities hereinabove cited.

ARGUMENT.

I.

The beads in question, being in fact strung on cotton threads, and so assorted and strung not merely for convenience in handling, but in order to change their condition into that of selected beads which shall have a salable value, and being also familiarly known in the trade as "strung beads," are not included either in ordinary or commercial usage within the terms of paragraph 408 as beads "not threaded or strung," and must in accordance with their commercial designation be excluded from classification under such paragraph.

They are, in fact, threaded or strung on cotton threads; they had been familiarly known in the trade as strung beads for many years prior to the passage of the act of 1897, and it is not even claimed that they had ever been commercially known as loose beads. Clearly, therefore, they are neither unthreaded nor unstrung beads in either the ordinary or commercial usage of those terms, but being "strung beads," in their known commercial sense when the act of 1897 was passed, must be classified accordingly. Two Hundred Chests of Tea, 9 Wheat., 430, 438; Hedden *v.* Richard, 149 U. S., 346, 348; American Net and Twine Co. *v.* Worthington, 141 U. S., 468, 471; Cadwalder & Zeh, 151, U. S., 171.

In American Net and Twine Co. *v.* Worthington, 141 U. S., 468, 471, the Court said:

> It is a cardinal rule of this Court that in fixing the classification of goods for the payment of duties, the name or designation of the

> goods is to be understood in its known commercial sense, and that their denomination in the market when the law was passed will control their classification.

The whole contention of the petitioner is, in effect, that there should be incorporated in paragraph 408 the word "permanently," so as to make it read "beads not [permanently] threaded or strung," and that beads not strung for permanent use are to be deemed constructively loose within the meaning of this paragraph. There are several answers to this contention.

1. It conflicts with the "cardinal rule" by which the beads are to be classified as "strung beads," according to their commercial designation when the Tariff Act was passed.

2. There is nothing whatever in the paragraph itself to indicate that there was any legislative intention to add the fact of permanency of the threading or stringing as a further test of classification or to qualify in any way the language of the statute which makes the classification depend simply on the physical fact that the beads are not threaded or strung, and excludes from its terms all threaded or strung beads without any reference whatever to the permanency of such condition. Clearly, if Congress had intended the qualifications upon which the importer now insists, the word "permanently" would have been incorporated in the statute.

3. As it appears that some beads are, in fact, imported loose for manufacturing purposes, it is evidently to the beads thus imported that the terms

"not threaded or strung," in the act of 1897, were intended to apply; and there being a class of beads in commercial use to which the terms of the statute aptly apply no necessity exists for the incorporation of an additional qualification in order to give to the words of the statute their full and natural application.

The fact that beads had been commercially imported prior to the act of 1897 in a loose or unstrung condition appears in T. D. 12425 (January 26, 1892), which involved glass beads that had been imported "loose or unstrung," and it is evidently such loose beads that Congress had in view when the language of paragraph 408 was adopted.

4. On the other hand, there is no evidence whatever that there is any other class of beads to which the term "threaded beads" might be more aptly applied than to those threaded for purposes of handling and sale, and, so far as this record discloses, if the beads in question do not answer the description of threaded beads there are no beads constituting an article of commerce which do.

5. Apparently Congress, in using the phrase "not threaded or strung," intended to differentiate the conditions of being "threaded" and of being "strung" as indicating different degrees of permanency, using the word "threaded" in the sense of a temporary fastening and the word "strung" in the sense of a more permanent union. The term "threaded beads" is in fact most apt for the very purpose of designating beads threaded for temporary purposes, as the in-

herent idea of a thread is that of a fragile or temporary fastening, and from the very nature of the words used it would appear that the term "threaded" beads was intended to refer, as distinguished from strung beads, to those which, from the nature of their fragile fastening, were not intended for use as jewelry, necklaces, or other permanent purposes.

It appears, in fact, that as the bill was originally passed in the House of Representatives, the words used were merely "beads of all kinds, *not strung*," and that in the Senate this paragraph was amended so as to insert the word "threaded" and make it read as in its present form: "beads of all kinds, not threaded or strung." (An act H. R. 379, 55th Cong., 1st sess. as passed after Senate amendments, p. 163, lines 8 and 13.)

Evidently by this amendment, inserting the word "threaded" in the act, Congress intended to expressly provide that there was to be excluded from paragraph 408 all forms of strung beads, whether permanently strung or only temporarily threaded.

6. As the purpose for which these beads are strung abroad is not merely a fastening together for purposes of transportation, but, as shown by the petitioner's own witness, chiefly that they may be sold at all, as otherwise, on account of the large number of defective beads contained in loose beads, it is difficult to sell them in this condition, the record here does not present the case merely of an article temporarily fastened together for purposes of transportation, as is assumed in the petitioner's argument—

it being, in fact, difficult to see just how it is easier to transport threaded beads than loose beads—but the very different case of an article upon which considerable additional labor has been expended abroad in the process of assortment and threading for the very purpose of increasing its salable value in this country, a question evidently involving considerations of a very different character from those cases in which a mere convenience of transportation is involved.

There is certainly nothing in the act to indicate that Congress intended to include within the phrase "not threaded or strung" a class of beads upon which much additional labor had been expended abroad for the specific purpose of putting them in this condition so as to increase their sale in this country.

II.

The classification of these beads as metal articles under paragraph 193 results in a graduated classification on metal beads under which the duties are increased in proportion to the labor expended on them abroad, in accordance with the general policy of the tariff law.

According to the classification made by the collector and sustained by the Board of Appraisers and the courts below, the resultant classification and rates of duty on metal beads are as follows: On loose metal beads, neither threaded nor strung, on which the least labor has been done abroad, a duty of 35 per cent, under paragraph 408; on metal beads, either threaded and strung, on which more labor has consequently

been bestowed abroad, a duty of 45 per cent, as articles of metal under paragraph 193; and on embroideries and other articles, not specially provided for, composed wholly of metal beads, and not in any part of wool, a duty of 60 per cent, under the concluding clause of paragraph 408, which imposes such duty on articles manufactured in part from beads.

Such a graduated increase in the rates of duty on metal beads in proportion to the labor expended abroad is in harmony with the general purpose of the tariff act. The Board of General Appraisers aptly said on this point that—

> the whole scheme in the present tariff evinces a determination on the part of Congress to differentiate between crude materials which have not been advanced in value by the application of labor abroad and those which have. Instances of this are found in paragraphs 303 and 385 of Schedules I and L, covering threads or yarns which partake of the nature of raw materials for weavers, but which, having been advanced in value and condition by process of labor, are made dutiable at comparatively high rates. Paragraphs 20 and 435 are among other numerous instances showing the same intent.
>
> The testimony of large importers of beads whose interests were in the direction of seeing a reduction of duties, and one of whom is a protestant in the cases now before us, was to the effect that * * * the labor of assorting and stringing beads added 15 to 20 per cent

to the value of loose beads. Can we not conclude that this fact was the potent cause which induced Congress to eliminate strung beads from paragraph 408 entirely, the rate of 35 per cent chargeable on loose beads being regarded as too low for those enhanced in value 15 per cent by a process of labor abroad, and that of 60 per cent—the rate chargeable on trimmings and completed articles—as too high? The effect of eliminating strung beads from paragraph 408 does not lead to an incongruous condition, but on the major part of imported beads strung the result would be the imposition of duty at a rate 10 per cent higher than on beads not strung and 15 per cent lower than for the beaded goods. Assuming, for argument's sake, and the assumption is not unreasonable, that the labor of assorting and stringing beads was performed in this country by women and children, it could plausibly be concluded that Congress, by legislation, secured to them a fair degree of protection. (R., 18.)

III.

It had been uniformly held, prior to the act of 1897, that beads strung in bunches were not "loose, unthreaded, or unstrung" beads within the meaning of the tariff act of 1890, and the words "not threaded or strung" in the act of 1897 are to be hence construed in like manner.

Tariff act of 1890.

The first tariff act to classify beads by reference to whether or not they were loose or strung was the act of October 1, 1890, which provided in paragraph

445 a duty of 10 per cent ad valorem on "*glass beads, loose, unthreaded, or unstrung*" (26 Stat., 600); the earlier tariff acts having either provided for all beads generally or for certain kinds of beads, without reference to whether they were loose or otherwise.

Under this act of 1890, providing a duty on "glass beads, loose, unthreaded, or unstrung," it was uniformly held both by the Board of General Appraisers and by the courts that glass beads, strung or threaded as in the present case and for the same purpose, were not entitled to entry under paragraph 445 as "loose, unthreaded, or unstrung."

The following decisions show the uniform construction which was given to the act of 1890 on this point.

In T. D. 10673, G. A. 257 (1891), it was held by the Board of General Appraisers that as an inspection of a sample of the glass beads imported showed that they were "not loose," but "assorted and strung upon threads," they were therefore clearly not entitled to entry under paragraph 445 of the act of 1890 as "glass beads, loose, unthreaded, or unstrung," as claimed by the importer, but, not being provided for denominatively in the act, were to be classified as manufactures of glass under paragraph 108 of the same act. While it is not stated in this decision that these beads were only temporarily strung, this inferentially appears from the next decision of the Board of General Appraisers on this point, as follows:

In T. D. 11885 (1891) it was again held by the Board of General Appraisers, on a protest by Steiner,

Kahn & Co., that glass beads, when strung upon cotton threads, even though temporarily, were not entitled to free entry under paragraph 445 as glass beads, loose, unthreaded, or unstrung, as claimed by the importer, but were properly returned as manufactures of glass under paragraph 408. In the opinion rendered by Sharretts, general appraiser, it was said:

> Admitting the claim of the importers that the beads were intended to be unstrung after importation to be correct, the fact remains that at the time of importation they were beads manufactured from glass, strung. They were therefore excluded from entry under paragraph 445 N. T., by the terms thereof. This ruling is in harmony with the decision of the Board—G. A., 257.

As the G. A. 257 thus referred to is the abovementioned T. D. 10673, it inferentially appears that in T. D. 10673, as well as in T. D. 11885, the beads were strung for temporary purposes only.

While it was also held in T. D. 11885, on a separate protest of one Veith, that certain nail-head beads fastened upon cards with threads were constructively loose, this result was not reached upon the theory of any temporary purpose of such threading, no such fact being stated, but upon the specific ground stated in the decision that "the testimony in the case showed that such nail-head beads were not known commercially as strung beads." Hence the ruling in reference to such nail-head beads is not an exception to the general line of decisions in reference to the

beads strung on threads and commercially known as strung beads.

The decision of the Board of General Appraisers in T. D. 11885 that the glass beads strung upon cotton threads were not "loose, unthreaded, or unstrung" beads under paragraph 445, was in proceedings for review affirmed by the circuit court in re *Steiner* (66 Fed., 726, 727), in which the court said:

> This question of fact was tried out before the Board of Appraisers, and they have found that the articles in question are "manufactures of glass," and are not unstrung glass beads. As I recollect the evidence, the only testimony before the board was to the effect that these are strung beads; in fact, a mere ocular examination of them demonstrates that they are strung beads. As there is no evidence to the contrary, the court would hardly be justified in overruling the decision of the Board. If it were a disputed question of fact on evenly balanced testimony, their decision should stand, but as it is the weight of evidence is clearly on the side of the collector.

This case was affirmed by the Circuit Court of Appeals for the Second Circuit without opinion. *Steiner et al* v. *United States*, 79 Fed., 1003 (1895).

While the manner in which the beads in the Steiner case were strung is not stated in the opinion of the court, yet it not only appears from the statement by the Board of Appraisers in T. D. 11885 that the importers claimed that the beads in question were only strung for purposes of importation, but in the opinion

rendered in the present case, Sharretts, general appraiser, who had delivered the opinion in the Steiner case, after referring to the conflicting decisions in the Buettner case and the Steiner case, it is said:

> We find as a fact within our knowledge that the importation, the subject of the conflicting decisions above referred to, was of similar description and strung in identically the same manner. (R. 18.)

It is further stated, in the opinion of the Board of General Appraisers in the present case, that the decision in the Steiner case "was regarded as final by the Government and importers and was adhered to and acquiesced in until paragraph 445, act of 1890, was repealed by the act of 1894." (R. 19.)

The fact that the importers did acquiesce in the rule established by the Steiner case that beads temporarily strung were not unstrung beads under the act of 1890 appears inferentially in the case of *Morrison* v. *United States* (179 U. S., 456), which involved a classification of certain glass strung beads colored in imitation of precious stones, imported under the act of 1890. While it appears, from the opinion of the Circuit Court of Appeals in this case (84 Fed., 444), that one kind of beads involved was "used principally in the millinery trade for trimming or for trimming ladies' garments," being evidently temporarily strung just as the beads in question, nevertheless the importer "conceded," by express stipulation, that the merchandise involved (including the beads intended for use in trimming) was "in fact threaded or strung

at the time of its importation and was thereby excluded from classification under paragraph 445" of the act of 1890 imposing a duty of 10 per cent on beads loose, unthreaded, or unstrung, and the only question, therefore, considered by the courts was whether the importations were dutiable at 10 per cent under paragraph 454 as imitations of precious stones or at 60 per cent under paragraph 108 as manufacturers of glass. In passing upon this point and determining that they were dutiable at 60 per cent as manufactures of glass, Mr. Justice McKenna, speaking for the court, said:

> It was impossible to have in contemplation glass beads, loose, unthreaded, and unstrung (445), and not have the exact opposite in contemplation—beads not loose, beads threaded and strung—and made provision for them. What provision? Were they to be dutiable at the same or at a higher rate than beads unthreaded or unstrung? * * * *It is a more reasonable inference that beads threaded of all kinds were intended to be dutiable at a higher rate than beads unthreaded, and if there can be a choice of provisions that intention must determine.*

So under the act of 1897 it is the more reasonable inference that beads threaded of all kinds were intended to be dutiable at a higher rate than beads unthreaded.

The tariff act of 1894.

The tariff act of August 27, 1894, omitted the words "unthreaded or unstrung" and substituted

in paragraph 99 a provision for "glass beads, loose, strung, or carded." (28 Stat., 514.) The Board of General Appraisers, speaking of this act, said:

> Congress in framing the tariff act of August 28, 1894, did so with the avowed purpose of reducing duties on crude materials. Having knowledge that by judicial decision temporarily strung beads were classifiable according to material under the act of 1890, paragraph 99 of the act of 1894 provided for "glass beads, loose, strung, or carded," at the rate of 10 per cent ad valorem. Had it not been that beads strung temporarily were regarded as not included within the term "loose" no necessity would have existed for incorporating the words "strung or carded," as the term "glass beads" without other qualifying words would have included those loose, and also such as were strung or carded for purposes of convenience or transportation. (R., 19.)

The tariff act of 1897.

The tariff act of July 24, 1897, returned, as to the inclusion of beads, to the phraseology of the act of 1890, except that it dropped the superfluous word "loose" and substituted in the place of the former words "unthreaded or unstrung" the synonymous words "not threaded or strung." (30 Stat., 189.) It follows that as the act of 1897 used in reference to beads in substance the same terms, to wit, "not threaded or strung," that had been used in the act of 1890, and as not merely the executive officers charged with the administration of the customs law, but also

the courts, had uniformly given to these words in the act of 1890 a construction which excluded from their meaning beads threaded or strung for any purpose, whether temporarily or permanent, Congress, under well settled rules of law, adopted this construction by the substantial reenactment of the language of the act of 1890 in the act of 1897, and indicated that these synonymous words were intended to be used in accordance with the prior decisions of the Board of General Appraisers and of the courts. (*United States* v. *Falk*, 204 U. S., 143, 152; *Robertson* v. *Downing*, 127 U. S., 607; *United States* v. *Healy*, 160 U. S., 136; *United States* v. *Ducas*.)

IV.

Decisions construing the act of 1897.

Since the passage of the act of 1897 the decisions, except in the Buettner case in the seventh circuit, hereinafter referred to, have been uniform to the effect that, in accordance with the decisions under the act of 1890, beads when threaded or strung in any form, whether temporary or otherwise, are not entitled to entry under paragraph 408 as beads not threaded or strung.

In T. D. 21053 (1899) it was held by the Board of Appraisers, on a protest by Steinhardt & Co., that small metal beads strung on threads and tied in bunches, being threaded or strung, were excluded from classification as beads not threaded or strung under the first clause of paragraph 408 of the act of

1897, and were dutiable as articles composed of metal beads.

In *Steinhardt* v. *United States*, 113 Fed., 996 (1902), it was held on a protest by the same importer, involving either the same or similar beads, that metal beads strung upon a cotton thread should not have been classified by the collector under paragraph 408 as articles composed of beads, but should have been assessed, as the importer claimed, as articles composed in part of metal, under paragraph 193. While the purpose for which these beads were strung is not specifically stated in the decision, yet they were probably the same small metal beads strung on cotton threads and tied in bunches that were described in T. D. 21053, and it is evident from the later decisions referring to this case that they were strung for temporary purposes merely.

It will be noted in this case that the importer, evidently in view of the long line of previous decisions construing the similar phrases of the act of 1890, did not even claim that these beads, being, in fact, strung, should be classified as unstrung beads, but the only contention was whether, not being unstrung beads, they should be classified as articles composed of metal or articles composed of beads.

This decision in the Steinhardt case was followed by the Board of General Appraisers in T. D. 23681 (1902), T. D. 23790 (1902), and in T. D. 24013 (1902).

In T. D. 24512 (1903) it specifically appeared that the metal beads involved were only "temporarily

strung for convenience in handling," but it was stated by the Board of General Appraisers that the question presented was identical with that involved in the Steinhardt cases and the three Treasury Decisions last above mentioned "and numerous unpublished decisions," and following these decisions it was held that the beads were not dutiable as beads not threaded or strung, but as manufactures of metal.

In T. D. 25291 (1904, being G. A. 5679, in which the testimony was taken of the two bead importers that has been incorporated in the present record) it was again held by the board of appraisers that glass beads, strung in bunches, whether permanently or temporarily, were not dutiable under paragraph 408 as beads not threaded or strung but as manufactures of glass under paragraph 112. The Board again stated that the question was identical with that passed on in the Steiner case, and declined to follow the Buettner case, saying:

> The evidence taken in the case now before us shows that, on and prior to the passage of the act of July 24, 1897, the term "beads threaded or strung" had a well-defined commercial meaning, which includes such beads as were both permanently and temporarily strung. It further appears from the testimony that the cost of the strung beads is from 15 to 20 per cent greater than for loose beads, the enhancement in value being attributable to the fact that a large percentage of loose beads not pierced through, or otherwise imperfect, have to be discarded, which fact can only be deter-

mined by an inspection of each bead separately. Inasmuch as the language of paragraph 408 is not ambiguous, and that leading merchants who have been importing beads for upward of twenty years, and whose pecuniary interests lie in the direction of lower duties, have testified that the commercial meaning of the words "beads, threaded or strung," does not differ from the common meaning of that term, we can reach no other conclusion than that Congress intended that beads however threaded or strung were not to be included under the provisions of paragraph 408.

V.

Reply to authorities cited in behalf of petitioner.

The cases cited in the petitioner's brief, except the Buettner case, are not in point, for the following reasons:

1. *Seeberger* v. *Schlesinger* (142 U. S., 581) and other similar cases which hold that in determining classification an immaterial element which is not a substantial part of an article is to be disregarded, have no application to the present case, since here under the statute the test of classification is not the material of which beads are composed, but the fact as to whether or not they are threaded or strung.

2. The case of *Fleet* v. *United States* (148 U. S., 335) and other cases and appraisers' decisions which hold that the attaching together of unmanufactured materials or the cutting them into lengths, for convenience of transportation merely, does not change

such materials into manufactured articles have no application, as it is not insisted by the Government that the beads in question are dutiable as articles manufactured out of beads, but merely that not being strung beads they are dutiable as articles made of metal, and as it furthermore appears that the object of stringing the beads is not merely for convenience in transportation, but also to change their condition from that of loose beads, which are unsalable, to that of strung beads bringing a considerably increased price.

3. Neither is T. D. 2596 cited in petitioner's brief as General Appraisers' Decision No. 5892, in conflict with the Government's contention. The point of that decision, which followed *Tiffany* v. *United States* (112 Fed., 672), merely was that pearls which had been pierced and strung for convenience in transportation did not become dutiable as pearls strung *as articles of jewelry*, but were dutiable by similitude at the same rate as pearls in their natural state under paragraph 436. The decision of the Board, rendered by Sharretts, general appraiser, clearly points out the distinction between that case and the line of decisions in reference to strung beads, as follows:

> In G. A. 876 (T. D. 11885) and numerous other decisions, the Board held that beads strung on cotton cords were not dutiable as beads loose, unthreaded, or unstrung, but in those cases the beads were strung within the trade meaning of the term, whereas the evidence shows that the pearls in this case were not strung as understood by the jewelry

trade. Paragraph 436 provides for pearls in their natural state, not strung or set. Pearls set would be jewelry, and it is reasonable to assume that Congress had this fact in view when it coupled the word "strung" with pearls set. This conclusion is strengthened by reference to paragraph 434, which provides for articles commonly known as jewelry, *including* pearls set or strung. The bunch of unselected pearls in the case now before us does not partake of the nature of jewelry, and on the authority of the decision in the Tiffany case, we hold they are by similitude dutiable at the same rate as pearls in their natural state.

4. In the case of *Buettner* v. *United States* (133 Fed., 163), on which petitioner principally relies, the Circuit Court of Appeals for the Seventh Circuit reversed the entire line of previous decisions, as above set forth, and, declining to follow the Steiner case, construed paragraph 408 in effect as if it read "beads not *permanently* threaded or strung." In reaching this conclusion the court, however, apparently did not have before it either any evidence that beads temporarily strung were familiarly known in the trade as strung beads, or any evidence that considerable extra labor was involved abroad in stringing the beads and that the chief object of this additional labor was to change their condition so as to render them salable in this country, it being assumed in the opinion that the process of stringing was merely for convenience in transportation. Furthermore, the court was not aware of the fact that the beads involved in the

Steiner case were only temporarily strung, as this did not appear from the opinion, and furthermore it did not have called to its attention any of the Treasury decisions above referred to or the later decision in the Steinhardt case.

VI.

For the foregoing reasons it is earnestly insisted that the decision in the Buettner case is contrary to the weight of authority and unsound in principle and should not be followed, and that the decision rendered in this case by the Circuit Court of Appeals for the Second Circuit, which is in harmony not only with the language of the act and commercial usage, but with the established line of decisions of both the Board of General Appraisers and the Federal courts, should be in all things affirmed.

Respectfully submitted.

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Assistant Attorney-General.

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SUPPLEMENT.

In support of the argument on page 15 of the foregoing brief, that the classification of the beads contended for by the Government will result in a graduated classification under which the duties are increased in proportion to the labor expended on them abroad, in accordance with the general policy of the tariff law, the attention of the court is called to the cases of *Arnold* v. *United States* (147 U. S., 494), and *Saltonstall* v. *Wiebusch* (156 U. S., 601).

In *Arnold* v. *United States* (147 U. S., 494, 497), in which it was held that knit woolen undershirts were to be classified as "wool wearing apparel" under paragraph 396 of the act of 1890, and not as "knit fabrics" under paragraph 392, Mr. Justice Brewer, delivering the opinion of the court, in enumerating the reasons leading to this conclusion, said:

> And in this connection may be noticed the relative rate of duty, which is higher for the articles in 396 than for those in 392. The idea which runs through this statute is well known to be that of protection to our manufactures. As the duty prescribed by 396 exceeds that prescribed by 392, it suggests that the articles named in 396 have

been subjected to an additional process, which is to be protected by an increase of duty.

In *Saltonstall* v. *Wiebusch* (156 U. S., 601, 604), in which it was held that pincers and other articles of forged steel were dutiable as manufactures of steel, Mr. Justice Brown, delivering the opinion, said:

> The fact that the further process which the articles specified in this case underwent represented but 3 or 4 per cent of the total labor expended upon them is by no means decisive when it is a question of classification, since the very object of Congress may have been to protect the additional labor. The lines between different articles enumerated in the tariff law are sometimes very nicely drawn, and *a trifling amount of labor is often sufficient to change the nature of the article and determine its classification.*

Supreme Court of the United States.

No. 257.—October Term, 1906.

Henry E. Frankenberg Company, Petitioner, *vs.* The United States. | On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 13, 1907.]

Mr. Justice McKenna delivered the opinion of the Court.

The question involved in this case is whether certain importations of metal beads are dutiable under paragraph 408 of the tariff act of July 24, 1897, at thirty-five per cent ad valorem, or at forty-five per cent ad valorem under paragraph 193.

The collector assessed them at the latter rate. The petitioner protested. Upon submission of the protest to the board of general appraisers that board sustained the collector. Its decision was successively affirmed by the Circuit Court and the Circuit Court of Appeals. Fed. Rep. .

The applicable paragraphs are respectively as follows: 408, "Beads of all kinds not threaded or strung, thirty-five per centum ad valorem; 193, "Articles or wares not specially provided for in this act, composed wholly or in part of metal, and whether wholly or partly manufactured, forty-five per cent ad valorem." There is no dispute about the character of the articles. They are metal beds strung on cotton cords or strings. They cannot, therefore, be said to be beads "not threaded or strung," which paragraph 408 makes dutiable at thirty-five per cent, if the words of that paragraph be taken literally. But it is contended that the construction of that paragraph is dependent upon the use to which the beads are put and the purpose on account of which they are strung. It is contended, and the contention is supported by the testimony, that the beads are used in the manufacture of purses, for the embroidery of cushions and dresses, never for personal adornment, and that they are strung or threaded in bunches for the purpose of facilitating transportation, and hence, in contemplation of the statute, loose beads. To this argument the Circuit Court of Appeals of the Seventh Circuit yielded. *United States* v. *Beuttner*, 133 Fed. Rep. 163. It did not prevail, however, with the Circuit Court of Appeals of the Second Circuit in the case at bar nor in a prior case. *In re Steiner*, 79 Fed. Rep. 1003. Notwithstanding this conflict in the Circuit

Courts of Appeal, the case is in such narrow compass that an extended discussion is not necessary. It may be that the stringing of the beads has but a temporary purpose. We, however, are not at liberty to disregard the condition upon which the law makes the duty depend. Indeed the considerations expressed by the board of appraisers makes it certain that the language of paragraph 408 was deliberately used to apply only to beads actually loose. This view is supported by the testimony as well. It was testified that prior to 1897 that the terms threaded and strung beads were familiar in the importing trade, and that beads strung on "threads for temporary use were commercially known at that time as strung beads." And it was further testified that there was an increase in value over unstrung beads from fifteen to twenty per cent on account of the labor attached to stringing.

Judgment affirmed.

Mr. Justice MOODY took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.